

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

CASE NO 2:04-CV-27-FIM-29DNF

MARCO ISLAND CABLE, INC.,

Plaintiff,

vs Fort Myers, Florida
 July 12, 2006
COMCAST CABLEVISION OF THE 9:00 A.M.
SOUTH, INC.,

Defendant.

TRANSCRIPT OF JURY TRIAL - DAY 2

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BEFORE THE HONORABLE JOHN E. STEELE
UNITED STATES DISTRICT JUDGE

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13 Q. All right, and did you have any objections to their
14 serving residents that chose to take their service?
15 A. Absolutely not. It's full compliance with 718.1232.
16 Q. Now, Mr. Gaston, were you ultimately able to provide
17 service at Crescent Beach?
18 A. No, I was not.
19 Q. Can you explain why that is so?
20 MR. BIANCHI: Objection, Your Honor.
21 BY MR. BALLER
22 Q. Can you explain what happened?
23 MR. BIANCHI: It's beyond the time frame that the
24 Court ordered
25 MR. BALLER: Your Honor, we're laying a foundation

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1 for events that happened in 2003 and this is an important
2 part of the history. And it won't take very long
3 THE COURT: Neither of those reasons would cause
4 the Court to change its ruling. However, having admitted
5 Exhibit 102 without objection, the Court will allow the
6 explanation. The objection's overruled. Go ahead with your
7 question.
8 THE WITNESS: Could you go with your question
9 again?
10 BY MR. BALLER
11 Q. Please explain what happened after you won the
12 contract and Crescent Beach notified its residents that you
13 were going to provide service at the property.

14 A. There were a flurry of letters from Comcast's
15 predecessor saying they owned the wiring and you could not
16 tamper with -- that the new company could not tamper, touch,
17 or do anything with that individual unit home and home run
18 wiring.

19 Q. All right. Mr. Gaston, may I call your attention to
20 Document 108, which has been admitted into evidence?

21 A. All right.

22 Q. And in particular, the last paragraph of that letter

23 A. The association will have a representative present
24 when you are at Crescent Beach.

25 Q. That's correct. Go ahead and read it in case the

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1 jury is not --

2 A. Okay. The association will have a representative
3 present when you are at Crescent Beach in order to confirm
4 that no disturbing or tampering with the existing wiring
5 utilized by Continental Cablevision occurs. You are to
6 recommence wiring of Unit 300, the last unit that the
7 association observed you unsuccessfully attempting to wire

8 Q. Were you able to wire the condominium?

9 A. I was not able to wire the condominium.

10 Q. Was there a particular wiring that you were --

11 A. I had two technicians, along with myself. We could
12 not pull the wiring through the conduit at all.

13 Q. And what wiring are we talking about?

14 A. We are talking about the individual unit home run
15 wiring, the wiring between the distribution point and the
16 unit.

17 Q. All right. When you determined that you could not
18 provide service to Crescent Beach because you could not
19 provide the wiring, what happened next?

20 A. I -- well, there was one other part. I attempted to
21 allow -- get them to allow me to post-wire the facility, and
22 they flatly refused.

23 Q. And then what happened, ultimately, to the contract?

24 A. They asked me to release them from the contract, and
25 I did.

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1 Q. I am introduce -- I'm putting up Document Number 111,
2 which has been admitted into evidence, and are you familiar
3 with this document?

4 A. Yes, I am.

5 Q. And what does this document represent?

6 A. This letter is in response to my letter offering to
7 let them out of their agreement.

8 Q. Okay. Thank you, Mr. Gaston. So Gulfview was your
9 first contract to provide cable television service in Marco
10 Island and in -- in this chart, the Crescent Beach activity
11 occurred in '94 to '96; is that correct?

12 A. That is correct.

13 Q. In the meanwhile, as the chart shows, you had begun
14 to obtain other accounts during that period; is that

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1 THE COURT: All right With regard to the
2 reliance on the case, lay whatever foundation you want and
3 I'll deal with it if there's objection. I don't see it now,
4 but obviously you know your case more than I do

5 MR. BALLER: Thank you, Your Honor. Ms. Larson
6 is, I think, correctly saying that certain of the experts of
7 the defendant is that Bill should have mitigated damages by
8 rewiring. It will be definitely a part of our case that
9 that is not possible to do, and -- but I don't think that we
10 need this particular evidence for that purpose

11 THE COURT: If and when that comes in from the
12 defense, you'll be allowed to rebut, and we'll deal with it
13 then.

14 MR. BALLER: Certainly. I understand
15 (Sidebar concluded)

16 THE COURT: The objection is sustained. You may
17 proceed

18 MR. BALLER: Okay

19 BY MR. BALLER

20 Q Mr. Gaston, let's move back to 1997 And you
21 testified that you obtained a new franchise?

22 A I obtained a new franchise in 1997, correct.

23 Q And you introduced digital service, you said?

24 A I introduced digital services. We were one of the
25 first cable services in the country to have digital service

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1 Q In the country?

2 A In the country.

3 Q And you said that you launched an aggressive

4 marketing campaign?

5 A We had an aggressive marketing campaign and received

6 a tremendous amount of new customers

7 Q Beginning in 1997?

8 A Beginning in 1997

9 Q Was there also a change in the ownership of the

10 incumbent cable company that year?

11 A Yes, there was. It went from Continental Cablevision

12 to Media One.

13 Q All right. And did Media One -- in your experiences

14 with Media One where you sought to -- let me ask that as a

15 question

16 Did you, beginning in 1997, begin to compete with

17 Media One for the ability to provide service in certain

18 condominiums in -- on Marco Island?

19 A Well, I competed with Media --

20 MR. BIANCHI: Objection, Your Honor, relevance.

21 THE COURT: Overruled

22 A I competed with Media One both in condominiums and I

23 started my single family home build-out

24 BY MR. BALLER

25 Q You started your single family build-out in --

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1 A. Correct

2 Q. Okay, and in the -- on the occasions in which you
3 competed with Media One for business at condominiums, did
4 Media One seek to enforce restrictions on inside wiring?

5 MR. BIANCHI: Objection, Your Honor, relevance, as
6 well as time.

7 THE COURT: I'll take the answer, but we're not
8 going to allow details

9 MR. BALLER: We don't want to get into details,
10 Your Honor.

11 A. No. Media One did not enforce wiring restrictions.

12 BY MR. BALLER

13 Q. And Media One was the incumbent -- the incumbent
14 cable operator for how long?

15 A. It's my understanding that from 1997 to 2000 and into
16 2000 or early 2001.

17 Q. And did Media One maintain this practice of not
18 enforcing restrictions on inside wiring throughout that
19 period?

20 MR. BIANCHI: Objection, Your Honor, beyond the
21 original question.

22 THE COURT: I'll overrule the objection. I'll
23 take the answer to the extent it's given a time frame.

24 MR. BALLER: Right. It is the time frame of 1997
25 to approximately the end of 2000.

1 something in addition to that.

2 MR. BALLER: Your Honor, Mr. Gaston can certainly
3 clarify.

4 MR. BIANCHI: Your Honor, before he clarifies --

5 THE COURT: Mr. Gaston, are you talking about
6 existing clients on Marco Island?

7 THE WITNESS: I'm talking about my concern over
8 existing clients.

9 THE COURT: On Marco Island?

10 THE WITNESS: Correct

11 THE COURT: The objection's overruled

12 BY MR. BALLER

13 Q Please start again and express a little bit more
14 clearly, perhaps, so Mr. Bianchi can understand your
15 statements about the cloud hanging over your clients.

16 A The cloud over my clients in that the -- I was
17 serving customers who had clauses in the contracts similar
18 to ones that were being disputed by Comcast and on Marco
19 Island, and they were taking serious actions with those
20 clients on Marco Island. And I was afraid that it would
21 extend to other clients in an attempt to gain control or
22 take -- of wiring or hurt -- hurt my reputation on the
23 island relative to the claims of ownership that I didn't
24 feel were valid.

25 Q Okay, let's go back to the mainland for a moment

1 Did you believe that Marco Island's method of competing
2 would be successful on the mainland if not restricted by the
3 matters you complained of?

4 A. No question I could be successful on the mainland if
5 I didn't have the restrictions and the problems associated
6 with some of the actions by the defendant.

7 Q And please explain What of those practices do you
8 believe would have been successful?

9 A My service, my price I'm a competitor I go after
10 it. I treat the customers right. They couldn't stop me on
11 the island, essentially, except they started slowing me down
12 substantially because people were afraid to take service
13 from Marco Island Cable.

14 Q Specifically, you mentioned price. How did prices
15 compare on Marco Island and the mainland?

16 MR. BIANCHI: Objection, Your Honor.

17 THE COURT: That's sustained I think you've gone
18 far enough with regard to motive

19 MR. BALLER: Okay Thank you, Your Honor. I
20 appreciate that

21 THE COURT: Have you finished your inquiry as to
22 this area?

23 MR. BALLER: Only -- only to -- I have one more
24 question. I wanted to show an exhibit I'd asked, and I
25 think we may have found it --

7 she was saying that she had not been given a price and she
8 had been a given a price.

9 Q. Okay. And so -- and so -- I understand. I
10 understand what you're saying. And is it your belief that
11 not only was it likely that a price was provided in that
12 document, but that a price, in fact, should have been
13 provided, meaning in the sense that a price was required to
14 be provided in that letter?

15 MR. BIANCHI: Object to the form, vague

16 MR. BALLER: Is it vague? Do you understand what
17 I'm saying?

18 THE COURT: The objection's overruled. She may
19 answer it if she can.

20 A. You asked if it was my belief. And my belief is that
21 we -- that we did give a cost here. My response is that I
22 really didn't understand why she was saying that she needed
23 a cost, because she had a cost. Maybe she missed it. I
24 don't know if -- maybe she didn't read the letter or -- she
25 should have seen the price. It was -- it was on the letter

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1 that we sent and so that was just my -- as you can see, I
2 responded very quickly, so obviously that was just my -- my
3 first reaction to the question that she should have been
4 provided a price.

5 BY MR. BALLER

6 Q. Based on your business understanding of the federal
7 rules, was a price required in that first letter?

8 A. Based on my business understanding, there are a lot
9 of time frames with regards to these rulings, with regards
10 to the wiring rules and whether or not you have to offer
11 pricing. Based on my understanding, when we first got the
12 cancellation notice, it was already well into the period of
13 time that the property should have given us notice. By the
14 time we got that notification, it was pretty clear that a
15 decision had already been made for them to go to Marco
16 Island Cable. So our immediate response was to offer to
17 sell that property of Comcast that we had owned and
18 maintained under our agreement, and invested in, to go ahead
19 and offer to sell it in accordance with the FCC rules, even
20 though Charter Club's original notice did not come in a
21 timely fashion, did not come within the period of time
22 outlined in the rules, in order to give them the option to
23 purchase that to make the transition as smooth as possible
24 in the window that they had given us.

25 Q Okay, I'm not sure that's quite responsive to my

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1 question, but that's all right. In that statement, you said
2 that the Charter Club should have given you notice or timely
3 notice. I'm not sure you used the word "timely" there or
4 not, but I think that's what you intended to say. In that
5 sense, you're using "should have" in a different sense than
6 you're using "should have" in your own email; is that
7 correct?

8 A No, I would say that's -- that's not correct. You
9 know, the other thing, again, as I've mentioned to you
10 before, I'm not an attorney and I'm not able to give you the
11 legal explanation of the laws. My real understanding of the
12 laws is that if the disposition of the wiring, if it's
13 already understood in an agreement who owns the wiring, the
14 rules don't apply anyway. We were just falling back on the
15 rules as a courtesy to this property.

16 Q And in fact, during your deposition, you testified
17 that you didn't think the rules applied at all; isn't that
18 correct?

19 A Yes, my understanding is the rules are intended to --
20 to be something that people can go back to when the
21 ownership of the wiring is not addressed in the contract.
22 If the contract says, and both parties have agreed, this is
23 who owns the wiring, this is who maintains the wiring, and
24 it's done at one person's cost or the other person's cost,
25 and it outlines how that wiring is going to be addressed at

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1 the end of the term, the wiring rules don't apply. The
2 wiring rules are intended when there's a dispute over that
3 They weren't intended for when that information is already
4 agreed upon between the parties, as was the case at Charter
5 Club.

6 Q Okay. Do the rules apply if the cable operator does
7 not own the wiring?

8 A I believe that if it's not specified who owns the

17 done?

18 A. That's a little bit confusing. I'm sorry, I -- I

19 believe I understand what you're asking me, and that is, is

20 the work order, in my opinion, the proof, and the work order

21 is the proof that the work was done.

22 Q Okay. And I thought you went on to say that you had

23 no indication that the work wasn't done, so you assumed that

24 it was; is that -- isn't that what you said?

25 A. I don't recall my exact words, but there was a work

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1 order to have the rewire work done. There was an agreement

2 as such. So I would say my understanding is that the work

3 was done

4 Q. Okay. And in the course of deciding to remove the

5 inside wiring from the Charter Club, do you recall whether

6 Comcast analyzed the cost that would be involved of doing

7 that work?

8 A. In the process of -- I'm sorry?

9 Q. You testified that Comcast made a decision that it

10 was going to move -- remove the home run wiring, and that's

11 what this letter states; is that correct?

12 A. Yes, correct

13 Q. In the course of making the decision to remove the

14 home run wiring, did Comcast calculate the cost of

15 undertaking that activity?

16 A. I did not calculate that personally, but somebody at

17 the system most likely would have.

18 Q Most likely would have?

19 A Most likely.

20 Q And did you have information as to how much time

21 would be involved in removing the home run wiring?

22 A I don't recall specifically having information about

23 the timing of how much time it would take to do that.

24 Q Were these matters discussed as you were arriving at

25 this decision?

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1 A I'm sure that the matters were discussed because this

2 would be considered a project that we would have to

3 undertake to go in and remove the wiring.

4 Q And would the effect on the aesthetics of the Charter

5 Club have been a matter that you also discussed?

6 A I don't recall discussing -- discussing that.

7 Q Okay. What about the cost to the Charter Club to --

8 or Mr. Gaston, whoever paid for it, to put duplicate wiring

9 into the system, was that discussed?

10 A I don't recall discussing what Mr. Gaston's cost

11 would be to wire the Charter Club.

12 Q Were you assuming that the cost would be substantial?

13 A I can only answer that question based on what I know

14 our costs are to do post-wires.

15 Q And what are your costs of doing post-wires?

16 A It can range, depending on the situation. I will say

17 nothing like any of the figures that I heard yesterday.

18 I've never seen a post-wire of a property cost more than
19 \$500, \$550, in that range. Sometimes it's significantly
20 less. It just depends on exactly how the post-wire can be
21 done. I mean, sometimes it can be done for a hundred
22 dollars a unit or less. It depends on how the job is going
23 to be completed.
24 Q. Okay. Now let's turn to the quotation in the middle
25 of the document. I think that is about -- there we go.

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1 All right, now, do you recall seeing that
2 quotation at the time, or before, or just before this letter
3 was sent to the Charter Club?
4 A. This would have been taken directly from the
5 contract. So as I mentioned before, I don't recall the
6 circumstances by which were we sitting down in person, was I
7 available by phone. What I would recognize is that would be
8 from the agreement, itself.
9 Q. And is it Comcast's policy, when quoting from a
10 contract, to quote the entire provision?
11 A. I would say that in some cases, we would, if it was a
12 short provision. In some cases we would include the whole
13 thing and in some cases we would abbreviate. Obviously here
14 we did abbreviate.
15 Q. And is it your testimony you abbreviated to make the
16 quotation shorter?
17 A. I would certainly say that that is my testimony,

18 because I would definitely say that we would not have
19 changed this to try to hide something. The customer
20 obviously had a copy of the agreement. It was negotiated by
21 both parties, so it wouldn't be something that we would
22 intentionally hide. Both parties have a copy of the
23 agreement.
24 Q Well, couldn't you have removed any doubt as to
25 whether the customer had an agreement by attaching a copy?

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1 A. I think that that probably would have been a really
2 nice courtesy. We didn't think to do that at the time. But
3 now that you mention that, I think that it would be a nice
4 courtesy. Typically our customers have a contract and it's
5 usually not a question or an issue.
6 Q Okay. So your testimony is that the provision that
7 was deleted here, the dot, dot, dots right in the middle
8 right next to where my X is, was insignificant and was
9 deleted to shorten the paragraph; is that correct?
10 A No, that is not correct. I don't think what was
11 deleted here was insignificant. I don't think any portion
12 of this would be considered insignificant but I would agree
13 and I would say it is my testimony that it was done to
14 shorten the paragraph.
15 Q Okay. Let's just put Paragraph 3 back on the ELMO
16 and let me direct your attention to --
17 MR. BIANCHI: Mr. Baller, what exhibit number are
18 you showing the jury so the witness has the benefit of the

20 parties, and the disposition of the wiring at the end of the
21 contract is not -- and when I say disposition, I mean how --
22 how you're going to deal with that wiring at the end, do you
23 remove it, sell it, if those things are not addressed in the
24 contract, then my understanding is that, yes, there are
25 provisions in the agreement, or in the -- in the rules

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1 Q. Okay. So the rules provide procedures for the
2 purchase of both home run wiring and home wiring, but you
3 decided not to offer the opportunity to purchase the home
4 run wiring, but only the cable home wiring; is that correct?

5 A. Yes. With the investment that we have there, and the
6 fact that the ownership of the wiring was outlined in the
7 agreement, we decided that we did not want to sell the home
8 run wiring at that -- at this moment in time. We did not
9 offer to sell those. And we did offer to sell just the home
10 wiring.

11 Q. Well, by your interpretation, the agreement also
12 covered the home wiring; didn't it?

13 A. I believe the agreement covered all wiring.

14 Q. Okay. So why only the home run wiring and not the
15 home wiring? Excuse me, why not also offer Charter Club the
16 opportunity to purchase the home run wiring, as well as the
17 home wiring?

18 A. At the time, we made the decision that we would just
19 remove that wiring. It's not inside the customer's home, so
20 we figured we would just remove that and the new provider

21 could put their own in.

22 Q And did you make that decision because it is

23 particularly difficult to replace the home run wiring?

24 A No.

25 Q No?

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1 A No.

2 Q Okay. All right, let's look at the paragraph

3 beginning with "in accordance". Would you kindly read that

4 into the record, please?

5 A Yes. In accordance with Section 76.804(a)(4), with

6 respect to the cable home wiring located within the

7 individual units, Comcast is offering to sell the home

8 wiring within each individual dwelling unit which Comcast

9 could otherwise remove at 65 cents per foot replacement

10 cost. Please let us know of your election as soon as

11 possible.

12 Q Okay. Now, there you invoke the FCC regulations and

13 you provide a per foot replacement cost. Did you mean in

14 that paragraph to imply that 65 cents per foot was the

15 lawful calculation of the cost that the regulation that you

16 cited permitted you to charge?

17 A I believe that we probably would have had input that

18 that was an allowable price per foot.

19 Q And from whom would you have gotten that input?

20 A Most likely from either in-house counsel or outside

21 counsel. I don't recall.

22 Q. Okay. And did you hear Ms. Adamski yesterday testify

23 that the cost per foot of coaxial cable is something in the

24 vicinity of five to ten cents per foot?

25 A. I did hear her say that.

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1 Q. Okay. Do you agree with her?

2 A. I agree that companies like Comcast who buy, you

3 know, thousands and thousands and probably millions of

4 spools of cable probably can get it for -- for that range.

5 I don't know. I mean, that's possible. I'm not in the

6 engineering side of things, so I really can't -- can't say

7 exactly.

8 Q. Okay. But you did testify that you've had a lot of

9 experience in this area?

10 A. Yes. With post-wiring?

11 Q. Right.

12 A. Yes. But I didn't say I had experience pricing out

13 the materials.

14 Q. Okay. Now, did you read or hear about the testimony

15 of Comcast's person most knowledgeable about wiring, Mr.

16 Vaspasiano on what Comcast's assumption is on the cost of

17 cable wiring?

18 A. Did I read that?

19 Q. Yes.

20 A. No.

21 Q. Do you know what figure he gave as Comcast's cost of

1 the 29th, but not much was lost and that's -- and that
2 was -- that was what your paragraph offering to purchase the
3 wiring, 195 per unit for home wiring and 300 per unit for --
4 for the home run wiring was intended to do, to provide
5 information on what it would take to buy Comcast's interest,
6 as you saw it, in the cable home run and cable home wiring;
7 is that correct?

8 A. Yes. As I mentioned earlier, my understanding of the
9 way the process works is that we didn't necessarily have to
10 sell this wiring, but we were attempting to, like you said
11 just earlier, attempting to negotiate that and work some
12 kind of arrangement out between us and the Charter Club

13 Q. Right, and -- and your perception was that the
14 Charter Club believed that it owned the wiring, but wanted
15 to have all available information so that they could make an
16 educated judgment? That's what Ms. Adamski said; is that
17 correct?

18 A. I don't think that she claimed that she owned it. I
19 think she just claimed that she didn't have wiring -- or
20 that she didn't have the cost, if I'm not mistaken. I think
21 her -- her letter said she didn't choose either way. Of
22 course, I'm going totally by memory, but I think it said
23 that she -- she didn't elect an option either way and that
24 she didn't feel that she had a price. So I think that
25 the -- this letter that you have here was intended to

1 provide her a cost.

2 Q. Okay. And so in this letter, unlike the prior

3 letters, you actually made a proposal on both the home run

4 wiring and the inside wiring; is that correct?

5 A. That's correct. I think the intention here was just

6 to -- to offer both and to come to an agreement with the

7 Charter Club relative to Comcast's wiring at the property.

8 Q. Okay. Now, if I represented that Mr. Vaspasiano, who

9 we know the person to be most knowledgeable from Comcast of

10 the wiring issues, cost issues, that he -- that he said that

11 Comcast's estimate of the amount of wiring per unit is

12 approximately 150 feet, would you disagree with that?

13 A. I don't know if I would agree or not agree. I would

14 assume that he might be using an average and every property

15 is different. I just would have no way -- I'm really not

16 the technical or engineering person.

17 Q. Okay. Well, he's on your witness list, so subject to

18 his testifying one way or the other of that, let me just,

19 for purposes of discussion, use 150 feet per unit as a -- as

20 an average cost. Now, I happen to know that Mr. Bianchi has

21 a calculator and I'm going to give you a couple of

22 calculations and ask him to verify them, if need be.

23 MR. BIANCHI: I'm afraid I didn't bring a

24 calculator. Do you have an extra for me?

25 MR. BALLER: Just on computers.

2 MR. BALLER: Okay. In that case, let me give the
3 calculator to you.

4 THE WITNESS: I would hate to break Your Honor's
5 calculator. Do I -- oh, thank you.

6 BY MR. BALLER

7 Q. First, let's multiply 150 times --

8 A. I think it's solar and it's not coming on.

9 THE COURT: It is solar, actually. See if we can
10 turn a light on

11 DEPUTY CLERK: Here's one.

12 THE WITNESS: Thank you

13 BY MR. BALLER

14 Q. Okay? I've got only three calculations for you to
15 make, and first of all, multiply 150 times .07.

16 A. Okay.

17 Q. And what's your total?

18 A. \$10.50.

19 Q. Okay, and I represent, subject to your verification,
20 that 150 is the average feet of wiring per foot and .07 is
21 seven cents a foot, which Mr. Vaspasiano testified is
22 Comcast's average cost of wire, and that total is \$10.50;
23 correct?

24 A. Correct.

25 Q. And so that is roughly somewhere between 15 times and

2 A. Yes. I don't think that these prices here are the
3 cost of just cable. I think they're the cost of actually
4 what it would be -- well, it actually says the cost based on
5 actual replacement, and in our estimates, the approximate
6 cost to Charter Club or the incumbent provider to replace
7 such wiring.

8 Q. Okay. Now, do another, one more calculation -- now,
9 time out. Before you do that calculation, let me ask you
10 whether the figure that you used before, 65 cents per foot,
11 was -- no, that's not a calculation.

12 A. No, I wasn't doing anything. I was clearing it. I
13 don't know where you're going

14 Q. When you previously used the figure of 65 cents per
15 linear foot, was that also a figure that included all other
16 costs in addition to the wiring, itself?

17 A. Unfortunately, I don't know. As I told you earlier,
18 I don't know what the background was for establishing that
19 price

20 Q. Okay. Do you have any reason to believe that Comcast
21 used a different methodology for the calculation of 65 cents
22 per foot and the calculation that's here, \$195 per unit?

23 A. I suppose it's entirely possible that the
24 calculations were different. I just don't know.

25 Q. Okay. Well, now let's do another calculation. Let's

1 divide 195 by 150. And what's that figure?

2 A. \$1.30.

3 Q. Okay, and let me represent that what these figures
4 are are the \$195 per unit divided by 150 feet, the average
5 of number of feet per unit and that the result, a dollar 30,
6 is the price per foot of wire. Does that make sense to you?

7 A. Well, I mean, I just did the calculation. I just
8 divided as you instructed me to divide. I don't really,
9 like I said, know the number of footage or the technical
10 costs, per se.

11 Q. Okay. Well, Mr. Bianchi can do his own calculations
12 and test my assumptions and if I'm incorrect, he can bring
13 that out in your -- in his response with you. But to me, it
14 looks as though between the last letter and this letter,
15 Comcast has now doubled the replacement cost for the home
16 wiring. And I'm going to ask you whether you received any
17 new information between the time that you were involved in
18 preparing the last letter and the time that Comcast sent
19 this letter to the Charter Club that would account for why,
20 if I'm correct, the price per foot of wiring doubled?

21 MR. BIANCHI: Objection, Your Honor, improper
22 predicate. The witness has testified that she doesn't know
23 how many square feet, how many linear feet there were
24 associated with the -- with the units at Charter Club.

25 THE COURT: The objection's sustained.

1 BY MR. BALLER

2 Q. All right. Now, let's do one more calculation.

3 Let's now divide 195 by .07.
4 A. Okay.
5 Q. And what is your result?
6 A. The result is 2,785.
7 Q. Okay. And let me represent that the 195 is the price
8 per unit and the .07 is the actual cost of the wiring,
9 itself, without other costs associated with it, and that the
10 2,785 represents the number of feet of wire that one could
11 purchase if one spent seven cents a foot and paid \$195. I
12 realize this is -- if you haven't thought about this
13 before --
14 A. Assuming that all of the footage is right and the
15 costs are right, if you divide it that way, that's what it
16 would indicate. But I don't know that that's necessarily
17 how that was created. So I just don't know.
18 Q. Okay. Is it your -- is it your testimony that what
19 probably accounts for the significant differences is that
20 your figure does not merely include the cost of the wiring,
21 itself, but also includes other costs associated with
22 installation or removal of wiring, whatever those costs may
23 be?
24 A. I believe that these costs factored in, number one,
25 that we didn't necessarily have to offer to sell this

1 wiring, that that's a negotiated price, that Comcast had
2 made an investment in the wiring, that Comcast had
3 maintained the wiring throughout the term of the agreement.

4 We had an investment at the property. We put forth an offer
5 to the property to sell this wiring and these were the costs
6 that we came up with.

7 Q. Okay. But in your letter -- in your letter of -- in
8 your letter of May 31st, you invoked the FCC regulations for
9 the basis of your calculation of 65 cents a foot; is that
10 correct?

11 A. I think we referred to the regulation with respect to
12 actually offering to sell it. I'm assuming that somebody
13 looked at that regulation to make sure that the cost was
14 acceptable.

15 Q. And would a reasonable -- a reasonably intelligent
16 person reading that paragraph believe that 65 cents per foot
17 represents the replacement cost permitted or required by
18 Section 76 804(a)(4)?

19 A. I think that somebody would look at that and assume
20 that, that that was an acceptable price.

21 Q. Okay.

22 MR. BIANCHI: Your Honor, objection, we've already
23 established that we want the redacted --

24 MR. BALLER: It's okay.

25 THE COURT: Use the other version, please.

1 MR. BALLER: Use the other version. Yes, I'm
2 sorry
3 BY MR. BALLER

4 Q. And here, here on July 29 --

5 A. It's the same letter; right?

6 Q. Yeah, the same letter we were talking about before.

7 And here, if my calculations are right, and Mr. Bianchi and

8 you can verify that, you're proposing twice the per foot

9 price that you had proposed before. And so if one thought

10 that the 65 cents were permissible, in this instance, you're

11 now proposing twice the rate, would one assume that that is

12 also permissible?

13 MR. BIANCHI: Objection, Your Honor. We've

14 already established that this witness does not know how many

15 linear feet it requires for home wiring in the Charter Club.

16 Mr. Baller's question presupposes that it's only 150 feet

17 THE COURT: The objection's overruled. She can

18 answer if she can.

19 A. There's first the issue which I've mentioned to you,

20 I don't know what the -- what the specifics are in terms of

21 footage and specific costs. But secondly, as I've also

22 stated, Comcast did not have to sell this wiring. Comcast

23 was attempting to sell the wiring to the Charter Club. They

24 had already made a decision to go with another provider.

25 Comcast in no way was attempting to stop that. We were

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1 simply attempting to start a discussion and to give the

2 Charter Club information that they didn't feel they had

3 Hence the letter.

4 These were the figures that we came up with.

5 This is what we believe the value to be, and that's the
6 value that we offered.

7 BY MR. BALLER

8 Q. Okay. Based on your business understanding, do the
9 Federal Communications regulations allow a cable operator to
10 charge anything other but the price of the wire, itself, on
11 a per foot basis?

12 MR. BIANCHI: Objection, Your Honor. That
13 question is vague. Those regulations speak of different
14 types of wiring and this question is too broad.

15 MR. BALLER: Okay, I'll narrow it.

16 THE COURT: The objection's overruled but you may
17 rephrase your question.

18 BY MR. BALLER

19 Q. Okay. I'm referring to cable home wiring and I am
20 asking you whether in a circumstance in which the cable
21 operator must offer its wiring for sale to a unit owner.
22 The cable -- the cable operator is permitted to charge more
23 than the cost of the wire, itself, per foot, and not
24 anything in addition to the cost of wire per foot?

25 A. My understanding is that the -- the way it's worded

1 is that it's the replacement cost of the wire, and in cases
2 where that applies, I believe it's just the replacement
3 cost. Of course, this is not a situation where that
4 applied. So Comcast has an investment here. Comcast has

5 been maintaining this wiring. Comcast has -- has owned this
6 wiring, has run service calls at its expense, and I think
7 Comcast put forth a fair price for the wiring

8 Q. Okay. Do you know what, if any, investment Comcast
9 made in the wiring at the Charter Club?

10 A. I have a general understanding of our investment in
11 MDUs and in general, not just MDUs. And pursuant to the
12 contract and pursuant to our actions to maintain it, I have
13 a -- an understanding, yes, of our cost.

14 Q. Well, specifically with respect to Charter Club, what
15 is your understanding of the amount of money that Comcast
16 paid for the wiring at the Charter Club?

17 A. My understanding is that Charter -- at Charter Club,
18 Comcast or its predecessor would have brought in
19 distribution line, would have wired the building. And I
20 know to be fact that we did do maintenance and trouble calls
21 and that type of stuff, as well, throughout, at our expense.

22 Q. Okay. You said maintenance and you said you knew it
23 for a fact. What maintenance do you know that Comcast
24 performed on the wiring at the Charter Club?

25 A. One of the things that I wanted to make sure that

1 I -- that I understood, that I assumed but wanted to make
2 sure that I understood was Comcast runs service calls when
3 customers call in. It's called a trouble call, and Comcast
4 does go out and run repair calls. We also do maintenance on
5 the equipment, replacing equipment throughout the entire

6 system, be it distribution, wiring, splitters, fittings. It
7 could be any -- any part of the system.
8 Q. Let's just talk about wiring. What information do
9 you have that Comcast ever did any maintenance on the wires,
10 itself, at the Charter Club?
11 A. I know that there were trouble call activity that was
12 run out to Charter Club, based on reports that I have seen.
13 Q. Based on reports of maintenance on the wiring,
14 itself? Not talking about set-up boxes or jacks or
15 splitters. I'm talking about the wiring.
16 A. I actually have seen reports that encompass all of
17 that, including the converter boxes and the things that you
18 referred to, as well.
19 Q. And did Comcast furnish that data to the defendant in
20 this litigation?
21 A. I've actually just seen that data recently, just
22 looking and making sure that I understand --
23 Q. In what context did you see that?
24 A. In the context of looking at trouble call -- a
25 trouble call report.

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1 Q. And is this something that you looked at in the
2 course of preparing your testimony?
3 MR. BIANCHI: Objection, Your Honor, objection.
4 THE COURT: Basis?
5 MR. BIANCHI: Your Honor, may we have a sidebar?

6 THE COURT: You may.

7 (At sidebar, Court and counsel present)

8 MR. BIANCHI: Your Honor, the questions that

9 Mr. Baller are about -- it seems is about to ask of this

10 witness is -- is what kind of discovery was produced, what

11 kind of discovery was produced here. Now, trouble calls for

12 the Charter Club were never called for.

13 Now, he's going to try to create an impression

14 that somehow --

15 THE COURT: Hang on a second. You cannot examine

16 the witness as to whether discovery was or was not produced.

17 Is that what you intend to do?

18 MR. BALLER: No, no. I have not seen any trouble

19 calls that had anything to do with wiring, and I'm wondering

20 how the witness suddenly, before she testifies, has now

21 access to information that --

22 MS. LARSON: We asked specifically for in

23 discovery.

24 MR. BIANCHI: It was never requested.

25 THE COURT: My point is, if you've got a discovery

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1 dispute, you cannot raise that in front of the jury with the

2 witness. If that's what you're attempting to do, I'm not

3 going to let you do it, at least not preliminarily.

4 MR. BALLER: I'll ask her to describe what she's

5 talking about and we'll not refer to discovery.

6 THE COURT: All right. Any problem with that?

7 MR. BIANCHI: No, that's fine, Your Honor. That's
8 fine. I just don't want it to seem like we're somehow
9 hiding the ball when we're not hiding the ball

10 MR. BALLER: In fact, I think you are.

11 MR. BIANCHI: No, I'm not, I'm not. Sorry. And I
12 talk offense to that.

13 THE COURT: Hang on a second. If the answer is
14 she identifies a document that you don't think you have and
15 that was requested and should have been produced, you can
16 come to sidebar and we'll resolve it there.

17 MR. BALLER: Okay

18 (Sidebar concluded)

19 BY MR. BALLER

20 Q. Would you kindly describe the specific document that
21 you're referring to that reflects the trouble call to repair
22 wiring, itself, at the Charter Club?

23 A. It's not a report that is regularly created. Rather,
24 in preparing and just kind of making sure I have -- my
25 understandings are correct, a list of the trouble call

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1 activity using a trouble code resolution, so there would be
2 all different types of trouble calls not just those
3 including wiring. It's more general than that.
4 Q. So are you saying that this document does not say --
5 that this is not a trouble call report on a request to
6 repair wiring, not -- not other kinds of trouble calls, but

7 I'm referring particularly to wiring at the Charter Club?

8 A. That's one of the trouble call resolution codes,
9 wiring. Inside wiring, home wiring, those are -- are parts
10 of trouble code, trouble code resolutions

11 Q. So you're telling me what a form says, but not that
12 the form referred to a specific event of a trouble call to
13 repair inside wiring; is that your testimony?

14 A. My testimony is that it would have had to have gone
15 out and looked at the events in order to give a number.

16 Q. So you're saying that there is a trouble call for
17 repair of maintenance -- or rather for repair of wiring at
18 the Charter Club?

19 A. There's trouble code activity at -- at all of our
20 properties. The same codes can also be used, in some
21 instances, in single family residence, for example, if we
22 had to go out and -- use the example of the converter. If
23 we had to go out and repair a converter, it would be the
24 same trouble code if it was in a single family home as if it
25 was in a condominium's home with a converter.

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1 Q. I'm not sure I understand. Are you saying that there
2 are certain codes that cover several kinds of activities and
3 that maintenance of wire is one that's covered by the code?

4 A. Yes.

5 Q. So --

6 A. There -- it's -- there's a code specific -- there
7 would be codes specific to specific resolutions to specific

8 problems.

9 Q. But I'm trying to narrow down whether there is a
10 unique code for maintenance or repair of wiring so that if
11 you saw a code checked, I don't know what your form looks
12 like, but if you saw that activity checked, you would know
13 that that was a repair of wiring and nothing else?

14 A. Yes, I believe there is a code that establishes that.
15 I don't work with that on a daily basis. That's not my area
16 of -- of expertise, but I know that when a resident calls in
17 to our call center and has an issue, they explain that
18 issue. The technician then goes out to provide service, and
19 then he indicates what he did to resolve the issue.

20 Q. Okay, and so you say that you saw one such report?

21 A. Yes.

22 Q. When did you see that?

23 A. Probably within the last five or six business days.

24 Q. Okay. And was that in the context of preparing your
25 testimony?

1 A. That was in the context of making sure that if I had
2 to answer that question, that I knew with certainty that I
3 could answer it correctly. Basically confirmed what I
4 already knew, but I just wanted to make sure that when I say
5 we run trouble calls and we don't charge and we do that at
6 our own cost to maintain our system, I wanted to be sure
7 that I was accurately going to answer that question.

8 Q Okay. And were you shown just one such call or were
9 there many?

10 A No, it was a tally of calls and it was not just on
11 one property -- it was just a massive report that just
12 showed whether or not activity was -- was done

13 Q Okay. And does this report show who paid for the
14 call?

15 A No, not specifically.

16 Q And so if the report showed maintenance on wiring,
17 you would not know whether the wiring was Comcast's wiring
18 or the condominium's wiring for which Comcast was charging a
19 service charge?

20 A Not necessarily by just looking at the report. One
21 would have to know the property and would have to know,
22 pursuant to the contract, who owns what. So with that
23 regard, of course I would know, having access to our
24 agreements, who owns the wiring.

25 Q And did you, in this particular instance, make the

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1 comparison to determine who paid for the maintenance call?

2 A Well, I know we don't charge for maintenance or
3 trouble calls. So I didn't have to make that comparison.
4 We don't charge for trouble calls.

5 Q Whether or not you own the wiring?

6 A If -- if we don't own the wiring, which in most cases
7 we do own the wiring because most condominiums don't want to
8 have to maintain it, we would not charge. In some cases

9 where we don't own the wiring, where we probably should
10 charge, we don't charge. And I found several of those
11 instances, as well, where it's just become such a course of
12 our business to run the trouble call, you know, if somebody
13 doesn't communicate to the technical department we should be
14 charging for that, there are instances where we do those
15 trouble calls at our expense, as well.

16 Q Okay Let me pause for a second and get the next
17 document.

18 Just to be clear that I understand your testimony,
19 how much, to your knowledge, does Comcast pay for
20 installation of inside wiring?

21 A. I think that that range can vary depending on what
22 work is needed.

23 Q Okay. Let's take a look at the figure \$300 per unit,
24 okay? Now, do you know whether that is -- \$300 per unit for
25 home run wiring Now, does Comcast have a standard rate for

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1 installation of home run wiring?

2 A. I don't think that there's a quote/unquote standard
3 rate, because each system is so unique. Some systems, you
4 have home runs from each floor. Other properties you've got
5 distribution that comes in maybe to a ground floor and then
6 the home runs go from there. So every circumstance is just
7 so different. Sometimes you have conduits that you can use;
8 sometimes you don't. So it varies.

9 Q So you're saying that you don't have a standard rate,
10 like Marco Island Cable's \$125 that we saw yesterday in the
11 exhibit, in one of the exhibits that was presented to him?

12 A No, not that I'm aware of. We base it on what is
13 actually needed to be done, what's going to be -- what is
14 the work that's needed at each property.

15 Q Okay. And you're saying that \$300 per unit is, in
16 the case of the Charter Club, a calculation based on the
17 specifics of what the cost would be to -- the replacement
18 cost of the home run wiring at the Charter Club?

19 A Well again, I -- I wasn't directly involved with
20 creating the price, but I will say that having worked
21 with -- with this in the past, that that is the price that
22 we came up with that we felt was a fair price.

23 Q Okay. Now, let's move to another topic. Would you
24 please put in front of you, or if you --

25 MR. BIANCHI: Excuse me, what exhibit are you

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1 putting in the --

2 MR. BALLER: The tax stipulation already in
3 evidence. I'm going to put up the tax stipulation between
4 Comcast and Marco Island Cable, and you can either follow
5 this here or you can look at Plaintiff's Exhibit Number 4.
6 BY MR. BALLER

7 Q Do you recall at your deposition of September 1st
8 when you were asked whether Comcast has paid personal
9 property taxes on the wiring that it claims to own, you said

10 that you didn't know anything about that, that was someone
11 else's responsibility? Is that correct?
12 A. That is correct.
13 Q. Is that still your position?
14 A. I've obviously learned a little bit more about it.
15 I'm still totally not the expert in this area, by any means.
16 Q. Well, based on your business understanding of the
17 federal rules, would knowledge that Comcast has not paid
18 personal property taxes on home wiring and home run wiring
19 for MDUs that it claims to own in Collier County have made a
20 difference to you in whether Comcast, in fact, owns the
21 inside wiring?
22 A. (No response)
23 Q. That's a bad question. Let me try to ask it again.
24 Does the fact that Comcast has not paid personal property
25 taxes for home wiring and home run wiring for MDUs that it

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1 serves in Collier County make any difference to you in your
2 view that Comcast, in fact, owns that home run wiring and
3 home wiring?
4 A. No. I would say it doesn't make any difference. My
5 understanding is that we haven't paid those taxes because
6 they're not required, possibly, and nor have we been asked
7 to pay the taxes. So I don't think that that's -- I think
8 that that's -- Comcast owns the equipment and there's
9 certain equipment that you pay taxes on and there's certain

10 equipment that you don't. And I know that Comcast would not
11 intentionally not be in compliance with -- with tax laws
12 Q. Okay. Now, you're saying that you don't question
13 that Comcast has not paid personal property taxes because in
14 fact, we've stipulated that it hasn't, and are you --

15 MR. BIANCHI: Objection, Your Honor. That
16 question's improper. The stipulation says that it does pay
17 property taxes with regard to that equipment

18 MR. BALLER: Excuse me, you're right. I mean
19 to --

20 THE COURT: The objection's sustained.

21 MR. BALLER: I mean to address only the home
22 wiring and home run wiring. I do not mean to imply, and
23 I've never meant to imply that Comcast has not paid taxes on
24 its distribution system. Okay?

25 THE WITNESS: Okay.

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1 BY MR. BALLER

2 Q. Okay, but we're in agreement that Comcast has not
3 paid personal property taxes on its home wiring and home run
4 wiring. You agree with that?

5 A. Yes.

6 Q. There's no question about that?

7 A. Uh-huh.

8 Q. Are we in agreement that that property is personal
9 property?

10 A. We're in agreement that Comcast owns that wiring,

11 yes.

12 Q. That that is personal property of Comcast?

13 A. I don't know that --

14 MR. BIANCHI: Objection, Your Honor, calls for a
15 legal conclusion.

16 THE COURT: Overruled. She can testify if she
17 can.

18 A. I don't know in the corporate world if it's referred
19 to as personal property or if it's referred to as something
20 else. So if personal property means that we own it, that
21 it's the property of Comcast, definitely, I would say that
22 we own it

23 BY MR. BALLER

24 Q. Okay. Now, let me move to Plaintiff's Exhibit 195,
25 which is the Continental Cablevision agreement that

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1 Mr. Bianchi questioned one of our witnesses yesterday about.

2 MR. BIANCHI: Counsel, I believe the -- may I?

3 (Discussion off record)

4 MR. BIANCHI: I don't believe it's been admitted,
5 but we have no objection, provided it's the redacted
6 version.

7 MR. BALLER: You want to redact this?

8 MR. BIANCHI: Not redacted, but that you have all
9 the pages.

10 If it's -- Your Honor, I don't believe, according

13 MR. BIANCHI: Your Honor, we also have the
14 redacted letter, the Cozumel letter, if we could get it
15 printed up.
16 THE COURT: Can he do that while we're discussing
17 it?
18 MR. BIANCHI: Yeah, sure.
19 (Discussion off record)
20 MR. BIANCHI: Your Honor, we object to Exhibits --
21 I'm sorry, are we on the record? We are, okay. I'm sorry,
22 Joy, I'm jumping, I'm not up here.
23 I've been handed -- is this plaintiff's exhibit or
24 defendant's exhibit?
25 MR. BALLER: Plaintiff's

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1 MR. BIANCHI: Plaintiff's Exhibit 215, 212, and
2 216. It's a series of emails. We object to these emails
3 coming in because they pertain to off-the-island contracts.
4 Specifically, it's talking about the Hammock Bay agreement,
5 which is -- the Court may want to take judicial notice or
6 not, but it's located off the island and there's questions
7 back and forth about the terms and negotiations of that
8 Hammock Bay agreement, and we would ask that these documents
9 not come in for that reason.
10 THE COURT: Mr. Baller?
11 MR. BALLER: Your Honor, what these documents are
12 about are, according to their subject line, Vera Cruz
13 installation and services agreement, Vera Cruz installation

14 and service agreement, Vera Cruz installation and services
15 agreement. Belize and Vera Cruz WCI agreements, et cetera.
16 The Hammock Bay agreement was negotiated at the
17 same time as Belize and Vera Cruz, and as these documents
18 show, was the template for the two properties on the
19 mainland, Vera Cruz and Belize, and as the documents show,
20 they show what the intent is behind the Belize and Vera Cruz
21 agreements because they were negotiated at virtually the
22 same time. We cannot -- I suppose we can delete the words
23 Hammock Bay agreement and just talk about these as an
24 agreement and the Court would never know that we were
25 talking about the mainland, but the substance of these

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1 documents which reflect the intent of the parties and the
2 intent governing the Belize and Vera Cruz properties, both
3 of which are on the island, would be very important for us
4 to demonstrate. Or we'd be happy to refer to Hammock Bay as
5 XYZ, or something like that, so as not to reveal --
6 THE COURT: Let me look at the documents first,
7 please
8 MR. BALLER: Your Honor, I have one more point
9 that I would like to suggest to the Court.
10 One more point is this, is Defendant's 85, which
11 the defendant has not sought to exclude. In fact, it's on
12 its -- and it was admitted already into the record and it
13 contains references to these same properties and was not

14 withdrawn.

15 THE COURT: Well, I'm not sure it's been admitted
16 during the trial. This is one of those where I admitted it
17 at the status conference and then did the summary judgment
18 and --

19 MR. BIANCHI: Exactly, Your Honor.

20 THE COURT: It's my fault. I caused that
21 confusion. I apologize.

22 MR. BALLER: They didn't ask to withdraw this one.

23 THE COURT: 85, Defendant's 85, is that going to
24 be admitted or is there any objection, counsel?

25 MR. BIANCHI: We have no intent of admitting that

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1 document, Your Honor. It's an oversight, obviously. We
2 tried as hard as we could to get as many documents as we
3 could withdrawn after the Court issued the order of
4 July 3rd. Again, our issue is the same. These contracts
5 speak of negotiations with a developer off the island and
6 the import that -- the import that's being raised here has
7 to do with the fact that it's trying to go off the island
8 and explain -- well presumably, it's the idea of -- let me
9 start again.

10 We would object because the document speaks to
11 activities that are off the island that the Court has
12 already ruled are not part of this lawsuit. The contracts
13 are off the island.

14 THE COURT: All right. It looks to me, and

15 counsel can correct me if I'm incorrect, as to
16 Exhibit 212 -- I want to make sure, it's Hammock Bay that's
17 off the island?

18 MR. BIANCHI: That's correct.

19 THE COURT: And Belize is not Is Vera Cruz on or
20 off?

21 MR. BALLER: It's on the island.

22 THE COURT: It looks to me that Exhibit 212 can be
23 easily redacted. I only see one place where Hammock Bay is
24 mentioned in the last, second to the last line. Something
25 about a bug which might be a talking bug. I can't tell

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1 MR. BIANCHI: The issue is the whole series of
2 emails is -- certainly, if one reads it from the bottom to
3 the top up, which would be chronologically the way that they
4 go, it speaks of the Hammock Bay agreement being the one
5 that they're all looking at, and that's the -- what's made
6 reference to in the email that's dated at the very bottom of
7 the page, but from Ms. Mello to Mr. Kovacheff and
8 Ms. Delgado. And then from there on, it goes up. But the
9 whole gist of the chain is, you know, Hammock Bay is what
10 they're all talking about and Hammock Bay is the issue and
11 I'm not saying there are not other issues here. I'm not
12 saying that, Your Honor, but certainly, the concern is for
13 concerns off the island, not concerns on the island.

14 MR. BALLER: There's nothing --

15 THE COURT: Well, there's nothing -- there's
16 little in the email dealing with Hammock Bay, per se, and
17 the subject matter, according to the email, is Belize and
18 Vera Cruz agreements. I don't dispute what you say, Hammock
19 Bay forms the foundation or perhaps the model.

20 MR. BIANCHI: Exactly, Your Honor, and if the
21 Court were to look at 215, Plaintiff's 215, which is the
22 first in the series of the sequence, it starts off with
23 Ms. Mello's email to Mr. Kovacheff saying, here is the
24 Hammock Bay agreement modified at your request, which speaks
25 of Comcast's having an exclusive right to the owner's

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1 internal wiring. Hammock Bay is now part of this lawsuit,
2 or could be part of this lawsuit.

3 Then she speaks of what it is, then on the letter,
4 again, the email -- excuse me, Plaintiff's Exhibit 215,
5 starting with Mr. Kovacheff's email back to Ms. Delgado of
6 August 1st, again they're discussing the Hammock Bay and she
7 says it sounds like a plan, and if you follow the sequence,
8 it is that same sequence that continues on Plaintiff's
9 Exhibit 212.

10 THE COURT: Is there any intent to introduce or
11 attempt to introduce the Hammock Bay agreement, itself?

12 MR. BALLER: Your Honor, no. To us, you could --
13 you could be referring to any nomenclature for that. You
14 know, you could tell us to refer to it as anything, and the
15 text would be the same. And we don't have any intention of

16 talking about the mainland during the course of my
17 examination.

18 THE COURT: The Court is going to overrule the
19 objections to 212, 215, and -- let me look at 216.

20 MR. BIANCHI: Your Honor, if the other two are
21 coming in, then we ask that Plaintiff's 216, which is also
22 marked as Defendant's 85, would come in because it's all
23 part of the same sequence of communications. If you put
24 them together, it makes sense, other than some scattered
25 approach. Otherwise, it just becomes a half story.

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1 THE COURT: Let me stop you. With regard to the
2 exhibits, I would not oppose striking the phraseology
3 Hammock Bay, but to the extent no one tells them it's off
4 the island, I guess no one's going to know that it is.

5 MR. BALLER: I would want to be overly cautious
6 and not take any chance of someone randomly knowing that.

7 THE COURT: You want to just redact the Hammock
8 Bay and --

9 MR. BALLER: Right, and --

10 THE COURT: That's fine.

11 MR. BALLER: Yes, I do.

12 THE COURT: Unless you don't want that.

13 MR. BIANCHI: Well Your Honor, frankly, it doesn't
14 matter. I mean, it doesn't matter. If they're all coming
15 in, essentially they all should come in.

16 THE COURT: If they all are coming in -- let me
17 make sure we all understand it. All three of those exhibits
18 are coming in, and I would direct that counsel redact
19 "Hammock Bay" unless the defendant doesn't care or doesn't
20 want to redact it.

21 MR. BIANCHI: Well, I would say if it's going to
22 come in, I prefer to have a complete document rather than
23 some black language. The jury is maybe concluding that
24 we're trying to essentially hide something, which is not
25 really the truth, but we're trying to keep the case within

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1 the confines of the Court's order. So in all honesty, no,
2 if they're coming in, I would prefer them all to come in.

3 THE COURT: All right, we'll do that. They can
4 all come in unredacted, then.

5 MR. BALLER: And I move their admission

6 THE COURT: The Court is, if I've not said it
7 before, is going to overrule the objection to 212, 215, and
8 216, and those will be admitted.

9 MR. BALLER: Thank you, Your Honor.

10 (Plaintiff's Exhibits 212, 215, and 216 admitted)

11 THE COURT: Now, I'm not sure I ruled or
12 understand what the position is with regard to Defendant's
13 85. Is that being offered or is that --

14 MR. BIANCHI: Your Honor, it's the same number.
15 You've taken care of it because basically it goes as 216.

16 THE COURT: Great.

17 MR. BIANCHI: I've also noticed that plaintiffs
18 have introduced the same document under different numbers.

19 THE COURT: I hadn't noticed that they've done
20 that. It may be on the exhibit list several times

21 MR. BIANCHI: According to my count, we at least
22 have the South Seas letter coming in twice already under
23 different numbers. That may just be -- I'm not saying I'm a
24 hundred percent right, but I was just trying to coordinate.
25 I would ask this from the plaintiffs, there's a weekend

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1 coming up, if they could clean up their exhibit list so that
2 we can avoid this problem, it will speed our trial
3 immeasurably, Your Honor, if they would at least stick to
4 one set of numbers for one set of documents, because what's
5 occurring is we're running around trying to figure out what
6 document it is half the time, trying to figure out whether
7 it's been admitted or not

8 THE COURT: I would encourage both sides to do
9 that and I would also indicate that I don't intentionally
10 intend to let the same copy of the same exhibit come in
11 twice. If that's happened so far, we can take care of it.

12 MS. LARSON: We tried to do that, Your Honor. We
13 will do that.

14 MR. BIANCHI: For example, on that particular
15 exhibit that I know of, there's different versions of it,
16 and obviously, they're different documents then.

17 THE COURT: That's right.
18 MR. BIANCHI: Thank you Your Honor, I
19 interrupted. I just wanted to make sure the jury gets in
20 and Ms. Delgado got returned to the box.
21 THE COURT: She can go up right now.
22 MR. BIANCHI: Thank you.
23 THE COURT: Have the jury step in, please.
24 COURT SECURITY OFFICER: Yes, sir.
25 (Jury in)

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1 COURT SECURITY OFFICER: You may be seated.
2 THE COURT: Mr. Baller, you may proceed.
3 MR. BALLER: Thank you, Your Honor. Good
4 afternoon, Ms. Delgado.
5 THE WITNESS: Good afternoon.
6 BY MR. BALLER
7 Q. Ms. Delgado, I believe that before the lunch break,
8 we were discussing the tax stipulation. Do you recall that?
9 A. Yes.
10 Q. And we had -- I believe you testified that there is
11 no disagreement between the parties that Comcast has not
12 paid property taxes for the years 2001 through 2005 on the
13 inside -- excuse me, on the home run wiring and home wiring
14 in condominiums in Collier County, but has paid property --
15 personal property taxes on the distribution system in
16 Collier County; is that correct?
17 A. Correct.

17 THE COURT: That's right
18 MR. BIANCHI: Thank you. Your Honor, I
19 interrupted. I just wanted to make sure the jury gets in
20 and Ms. Delgado got returned to the box.
21 THE COURT: She can go up right now
22 MR. BIANCHI: Thank you.
23 THE COURT: Have the jury step in, please.
24 COURT SECURITY OFFICER: Yes, sir.
25 (Jury in)

720

1 COURT SECURITY OFFICER: You may be seated.
2 THE COURT: Mr. Baller, you may proceed.
3 MR. BALLER: Thank you, Your Honor. Good
4 afternoon, Ms. Delgado.
5 THE WITNESS: Good afternoon
6 BY MR. BALLER
7 Q. Ms. Delgado, I believe that before the lunch break,
8 we were discussing the tax stipulation. Do you recall that?
9 A. Yes.
10 Q. And we had -- I believe you testified that there is
11 no disagreement between the parties that Comcast has not
12 paid property taxes for the years 2001 through 2005 on the
13 inside -- excuse me, on the home run wiring and home wiring
14 in condominiums in Collier County, but has paid property --
15 personal property taxes on the distribution system in
16 Collier County; is that correct?
17 A. Correct.

1 articulate it that way. Let me ask a different question.

2 You do payback analyses; right?

3 A. Yes, we do.

4 Q. What is a payback analysis?

5 A. Well, like any business, any business is in business

6 to be profitable and Comcast very often does what we term as

7 a payback analysis where we look at costs, investment

8 that -- the capital that we might be putting into a project

9 versus the subscribers that we may get in order to determine

10 the profitability of -- of a project.

11 Q. And if you look at your payback analyses, are you

12 able to determine return on investment, or is that not the

13 kind of information that a payback analysis will give you?

14 A. I've seen paybacks that will show us the return on

15 investment. Really, in some cases, when you spend capital

16 to build a project, for example, you may not actually see a

17 return on that investment for, you know, a period of years.

18 So yes, I mean, that's information that would be reflected.

19 Q. Okay. The loss of 1200 subscribers, you said, at

20 South Seas was an important development for Comcast; is that

21 correct?

22 A. Correct.

23 Q. And more specifically, what we're talking about at

24 South Seas is the loss of a bulk, an exclusive bulk sales

25 agreement; is that correct?

1 A. South Seas was a bulk account, yes.

2 Q. And would you describe what that means?

3 A. That means that there was an agreement between us and
4 the association to provide cable services at a discounted
5 rate to 100 percent of the units at the property

6 Q. Does that mean that 100 percent of the units must pay
7 for service, whether or not they choose to take it?

8 A. That would be something that would typically be
9 between the association and the residents.

10 Q. But between Comcast and the association, you would
11 expect a check that covered a hundred percent of the units,
12 whether or not 85 percent, 50 percent, or whatever of the
13 units were taking your service at any one time; is that
14 correct?

15 A. Yes. Typically, when those agreements are
16 negotiated, the association will -- will ask that service be
17 delivered to a hundred percent of the units. I don't know
18 how they handle collections between the residents, but --
19 but typically, that's how our agreements have worked.

20 Q. And to your knowledge, has that been a source of
21 gripes on Marco Island, that form of bulk sales contract?

22 A. That's not an unusual form of bulk contract. So --

23 Q. You haven't answered my question. Has it been --

24 A. Has it been a gripe? I haven't specifically heard
25 from customers that that's a gripe. Does it -- does it come

1 up in negotiations? It may. I understand that Mr. Gaston

2 has somewhat of a different policy from his testimony

3 Q. And what is that -- what's your understanding about

4 that?

5 A. My understanding is that his arrangement with the

6 association is for the units that opt to have the service

7 Q. And you said, I think, a moment ago that you haven't

8 heard gripes from customers; is that correct, directly

9 from --

10 A. Directly, yeah.

11 Q. Have you heard it indirectly through Ms. Mello or

12 Ms. Chrisann Folk?

13 A. Most of what I've heard from Ms. Mello and Ms. Folk

14 was related to the rate, itself, and not so much related to

15 the hundred percent that usually is included in those types

16 of agreements. They've indicated, or they had indicated in

17 the past that the rates were an issue.

18 Q. Okay. Now, why is it important to -- strike that.

19 Is it important to have a customer take basic

20 service? And please explain what basic service is to

21 Comcast.

22 A. Comcast has multiple levels of basic service. The

23 most preliminary basic service is what actually gets

24 services activated to the unit. You have to have basic. We

25 have to turn the service on for you to get that. Is that --

1 I mean, basic service is sort of the basic product that
2 subscribers can take.

3 Q Okay. And on the average, what is Comcast's rate for
4 basic service on Marco Island? And you don't have to be too
5 exact, just to give a ballpark of what we're talking about.
6 I know this will vary from place to place, high and low.

7 A Bulk rates?

8 MR. BIANCHI: Objection, Your Honor

9 THE WITNESS: Retail rates?

10 BY MR. BALLER

11 Q Bulk rates for basic service.

12 A Bulk rates can range. There are many things that are
13 factored in, so I'd like to explain that.

14 Q Please do.

15 A Contract term, size of the community, possibly
16 initial investment, those types of factors. I would say
17 that Comcast rates can range anywhere from \$6 a unit, \$7 a
18 unit, to \$20 a unit, depending on the type of property,
19 depending on the circumstances with each negotiation. Each
20 is unique.

21 Q \$6 a unit, did you say?

22 A Yes.

23 Q And how many properties do you sell bulk service at
24 \$6 a unit?

25 A Usually those types of communities would be more like

1 hotels, motels

2 Q. Well, let's take hotels and motels out and talk about
3 condominiums. What would be the range of high and low of
4 rates for bulk service, for basic bulk service?

5 A. I would estimate anywhere from -- I believe we have
6 communities at the 11, 12-dollar range up to the 20-dollar
7 that I mentioned before range.

8 Q. Let's use the bottom of the range, \$11, okay? Now,
9 if you have a contract that requires the condominium
10 association to pay Comcast \$11 for every unit in the
11 condominium, okay, and someone would prefer to take service
12 from Marco Island Cable, okay, and let's completely hold
13 aside questions of inside wiring. Let's say he is available
14 through some sort of wiring arrangement to provide that
15 service. Okay?

16 A. Uh-huh.

17 Q. And now the customer already has to pay \$11 for basic
18 service to you; is that correct?

19 MR. BIANCHI: Objection, Your Honor. Vague

20 THE COURT: Basis?

21 MR. BIANCHI: Vague. The question is the customer
22 is paying Comcast \$11. That's not what the witness has
23 testified to.

24 MR. BALLER: All right, I'll modify that.

25 THE COURT: The objection's overruled, go ahead.

1 BY MR. BALLER

2 Q All right. The association is already paying you \$11
3 for every unit in the condominium. That's correct? That's
4 my assumption, okay? I'm assuming this --

5 A If it's on a bulk contract, the association would be
6 paying Comcast to deliver service to all the units, that's
7 correct.

8 Q Okay. And would you assume that the association
9 would charge the customer's account \$11? Would that be your
10 assumption?

11 A My assumption would be that, that they would somehow
12 assess the residents for the -- for that.

13 Q Okay. And if a customer was in a condominium where
14 your assumption was correct, that the association was
15 assessing the customers \$11 each, each unit owner \$11 each,
16 would the customer now have to pay whatever Mr. Gaston's
17 prices were for comparable service plus your \$11?

18 A If the customer is being assessed, which I believe
19 that's probably how that is handled, and that customer made
20 the option and elected to have the other service provider,
21 then that customer would be making the decision that they
22 indeed want to do that. So yes, that would be the case.

23 Q Now, your services and Marco Island Cable's services
24 are fairly comparable; would you say that's true?

25 A I would say that the cable service is comparable,

1 yes.

2 Q. And so why would -- and to help -- why would any
3 customer want to pay you \$11, then pay \$11 plus whatever
4 Mr. Gaston charges for comparable service?

5 A. It could be due to maybe exclusive programming on our
6 line-up or -- I can't answer that question why somebody
7 would want to do that. I just know that they -- they
8 would -- that's what they would do.

9 Q. Okay. Now, suppose -- okay, and that's under the
10 assumption that the customer had a choice, because for some
11 reason, we've just assumed that it is possible for that
12 customer to choose Marco Island Cable and to be served by
13 Marco Island Cable. We weren't even talking yet about being
14 excluded because of this issue of control of wiring or
15 anything like that?

16 MR. BIANCHI: Objection to the form of the
17 question.

18 MR. BALLER: That's an assumption. That's what
19 I'm doing. I'm clarifying. I'm going to now change the
20 assumption.

21 THE COURT: Wait a second. Do you need a ruling?
22 I don't hear any question yet.

23 MR. BIANCHI: Your Honor, he's narrating to the
24 witness.

25 THE COURT: Ask your question. The objection's

1 yes.

2 Q. And so why would -- and to help -- why would any
3 customer want to pay you \$11, then pay \$11 plus whatever
4 Mr. Gaston charges for comparable service?

5 A. It could be due to maybe exclusive programming on our
6 line-up or -- I can't answer that question why somebody
7 would want to do that I just know that they -- they
8 would -- that's what they would do.

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10 assumption that the customer had a choice, because for some
11 reason, we've just assumed that it is possible for that
12 customer to choose Marco Island Cable and to be served by
13 Marco Island Cable. We weren't even talking yet about being
14 excluded because of this issue of control of wiring or
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17 question.

18 MR. BALLER: That's an assumption. That's what
19 I'm doing. I'm clarifying. I'm going to now change the
20 assumption.

21 THE COURT: Wait a second. Do you need a ruling?
22 I don't hear any question yet.

23 MR. BIANCHI: Your Honor, he's narrating to the
24 witness.

25 THE COURT: Ask your question. The objection's

1 sustained

2 BY MR. BALLER

3 Q. Okay. If on top of what we have assumed before there
4 are also significant issues of access requiring the
5 construction of a secondary system, would the cost of
6 building a secondary system reflected in the rates make it
7 all but inconceivable that a customer would be willing to
8 take service from Marco Island Cable?

9 MR. BIANCHI: It's overly vague, Your Honor. Cost
10 of building what system?

11 THE COURT: Overruled. If she understands it, she
12 may answer it.

13 A. I'm not sure I'm clear on the question. I'm sorry.

14 BY MR. BALLER

15 Q. Okay. We have -- we have discussed a hypothetical
16 and that hypothetical is that a customer has to pay Comcast
17 whether or not they want service from Comcast, that's basic
18 service, and then would prefer to do business with Marco
19 Island Cable. So we have concluded that in a MDU where the
20 association charges back to each unit the portion of the
21 bulk service price that it pays to Comcast --

22 MR. BIANCHI: Objection, Your Honor.

23 MR. BALLER: -- that that --

24 MR. BIANCHI: Objection, he's narrating to the
25 witness. If he's going to ask the question, he should ask

1 the question.

2 MR. BALLER: I'm just explaining where we are,

3 what our hypothetical was.

4 THE WITNESS: I understand that part.

5 THE COURT: The objection -- are you with him so

6 far?

7 THE WITNESS: Well, I understood what he was

8 explaining just now.

9 THE COURT: Ask your question.

10 MR. BALLER: Okay.

11 BY MR. BALLER

12 Q Okay, so we start with that as a base. If Marco

13 Island Cable now has to install a separate cable system in

14 order to reach those customers and recover costs of doing

15 that, do you imagine that it would be economically feasible

16 to do any business in an environment like that, in a condo

17 like that?

18 A I think you -- you know, you said if he had to

19 recover his costs, and in our business, we make investments

20 and we go out and we offer prices that we recover our costs

21 and I would assume that, as a businessman, Mr. Gaston would

22 do the same thing for his company and he would make the

23 investment and he would figure out in accordance with his

24 business what he would need to do to recover those costs.

25 Q Okay. So you're saying that he would add to what he

1 would have to charge for his service enough cost to be able
2 to -- or enough in the prices to be able to recover his
3 costs; is that correct?
4 A. I suppose that would be one way that he could recover
5 his costs.
6 Q. What would be another way?
7 A. Looking at different methods of wiring, whether it
8 can -- whether you can do it through conduit or whether you
9 have to do it other ways. I don't know.
10 Q. Okay, but your assumption is that one way or another,
11 he'd have to recover his costs, right, or whether he has to
12 bore through concrete and create another building -- another
13 system --
14 MR. BIANCHI: Objection, Your Honor
15 BY MR. BALLER
16 Q. -- or some other method, but you assume as a
17 businessman he'd have to recover his costs?
18 MR. BIANCHI: Objection to the form of the
19 question.
20 THE COURT: Overruled
21 A. I would say that that would be a normal business
22 practice.
23 BY MR. BALLER
24 Q. Okay. So recovering his costs, providing service
25 comparable to yours, and then on top of that having the

1 association unit owner have to pay your bulk service
2 agreement, your bulk service fee would create a tremendous
3 disincentive to Mr. Gaston or any other provider of service
4 competing with you; isn't that true?

5 MR. BIANCHI: Object to the form of the question,
6 Your Honor.

7 THE COURT: Overruled.

8 A. I would say that as with any business, there are
9 investments and you have to decide where it's profitable to
10 do business and where it's not profitable to do business and
11 that's what we do in our business. And if something is just
12 not profitable, we don't do it. It just doesn't make
13 business sense, and therefore, it wouldn't be a smart -- it
14 wouldn't be a smart decision to do anything that didn't make
15 business sense.

16 BY MR. BALLER

17 Q. Right. And what you're saying, in essence, is that
18 the way you do business, the way Comcast does business with
19 exclusive bulk sales agreements and arrangements that
20 require the construction of secondary systems makes it very
21 infeasible or impractical for competitors to compete with
22 you? Isn't that the logic of what you're saying?

23 A. No, I don't think that's -- that's the logic that I'm
24 trying to imply at all. We've done post-wire. I mean,
25 we've gone in and put our own cabling into buildings before

1 and I don't understand his business. I mean, I don't know
2 the details of his business, so I can't really answer your
3 question. You're asking me if his -- if it would make his
4 business not feasible. I don't know his business. I know
5 my business. So I'm --

6 MR. BALLER: Okay, okay. I'm going to move on to
7 another topic. If you'd like me to do that, I'd be happy
8 to. If you'd like to have a break, that would be fine, too.
9 But this is a transitional point for me.

10 THE COURT: Anybody need a break?

11 MR. BIANCHI: Your Honor, could we have a break?

12 THE COURT: You need a break?

13 MR. BIANCHI: I do, Your Honor.

14 THE COURT: All right, fair enough. Ten minutes.
15 Please do not discuss the case among yourselves or allow
16 anyone to discuss it with you or in your presence.

17 COURT SECURITY OFFICER: All rise for the jury.
18 (Jury out)

19 THE COURT: All right, ten minutes.
20 (Recess from 2:10 p m to 2:26 p m)

21 THE COURT: Have the jury step in, please.

22 COURT SECURITY OFFICER: Yes, sir.
23 (Jury in)

24 COURT SECURITY OFFICER: You may be seated.

25 THE COURT: Mr. Baller, you may proceed.

3 otherwise, that's what's in.

4 MR. BALLER: We are just interested in these
5 three.

6 THE COURT: May I suggest we had a ten minute
7 recess and first two minutes is you guys talking about
8 exhibits. Try and do it over the recess.

9 (Sidebar concluded)

10 MR. BIANCHI: Your Honor, may I go back on the
11 record?

12 THE COURT: You're on the record.

13 MR. BIANCHI: Rephrase it, may we go back sidebar?

14 THE COURT: No.

15 MS. LARSON: Your Honor, may I approach the
16 witness to put this back in her binder?

17 THE COURT: If that's the exhibits we're talking
18 about, you may.

19 BY MR. BALLER

20 Q. Ms. Delgado, are you familiar with an organization
21 called WCI Communities?

22 A. Yes.

23 Q. And do you recall whether in 2003 Comcast negotiated
24 agreements with WCI concerning three properties known as
25 Hammock Bay, Belize, and Vera Cruz?

1 A. Yes, I'm familiar with those.

2 Q. Was there a particular sequence in which those
3 documents were negotiated?

4 A If my memory serves me right, we did the Hammock Bay
5 agreement first, and then the Belize and Vera Cruz, or -- I
6 believe those were done at the same time.
7 Q Okay Would you please put in front of you
8 Exhibit 215, and at the top of this exhibit is your name; is
9 that correct?
10 A That is correct.
11 Q And would it be correct to assume that the sequence
12 of these emails is from the bottom up, where the first email
13 was then forwarded by the recipient with additional text in
14 the middle, and eventually that third email includes the
15 first two?
16 A Yes
17 Q That's correct?
18 A That is correct.
19 Q So the proper way to read these, from the standpoint
20 of chronology, would be to work from the bottom up?
21 A Correct.
22 Q Okay So let's start with the email at the bottom.
23 Who is Steven Kovacheff?
24 A Steven is the current development manager in the
25 Naples system.

1 Q And who is Nikki Mello?
2 A Nikki Mello is a account executive who used to work
3 for Comcast who reported to Steven Kovacheff.

4 Q Would you please read the first email into the
5 record, please?

6 A Yes Here is the Hammock Bay agreement, modified at
7 your request to state that Comcast has the exclusive right
8 to use the owner's internal wiring. You'll notice red line
9 that I have removed some other language that again referred
10 to our non-exclusive right. Once you get your okays from
11 Comcast, if you want to call Stephen together to see if he
12 is okay with this change for Vera Cruz and Belize, we can do
13 that together. Thanks.

14 Q Okay. First of all, do you know who, if you want to
15 call Stephen together, who is Stephen?

16 A As I recall, that was the attorney that they were
17 working with for WCI.

18 Q Okay. And what is your understanding of this very
19 brief email?

20 A My understanding of this email is that as is the case
21 with -- with every development, every property that we
22 negotiate, a contract with, that there was a discussion back
23 and forth between the parties about Comcast's exclusive
24 right to use the owner's internal wiring. So this -- this
25 exchange would have been in reference to modifications that

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1 were happening at the time relative to the contract that was
2 under negotiation.

3 Q Okay. And is it correct to say that in this email,
4 Nikki Mello, who is negotiating a contract, is saying that

5 she is sending her boss, Steven Kovacheff, a copy of a -- an
6 agreement that was either previously agreed or narrowing in
7 a point -- nearing a point of agreement to add language that
8 would give Comcast an exclusive right to use the owner's
9 internal wiring?

10 A. Yes. That would be my understanding, that they were
11 still in those negotiations and this was a point of
12 discussion

13 Q. And it appears from the sentence that Mr. Kovacheff,
14 in fact, suggested the modification; is that correct?

15 A. That's what the email indicates. I don't know the
16 exact circumstances, but yes, that's what's indicated here.

17 Q. Okay. Did Mr. Kovacheff have a dotted line
18 relationship with you, as you described it before?

19 A. Yes.

20 Q. And let's now move to the second email, the one in
21 the middle, and would you read that into the record please?

22 A. Yes. Terese, here's the Hammock Bay agreement with a
23 couple of changes. If we include language that gives us the
24 exclusive right to utilize the system during the term of the
25 agreement, then I believe we are safe from Marco Island

1 Cable. So we don't have to start from scratch, we could use
2 this template for the two Marco Island properties. We can
3 add this to our Monday stuff. We are meeting at nine a.m.,
4 I think was the intention, a team -- at nine as a team and

5 ten is our conference call. Thanks, Steven.

6 Q. Okay. Well, that's pretty simple and

7 straightforward; isn't it? If we do this, it will keep us

8 safe from Marco Island Cable; what did you understand that

9 to mean?

10 A. I understand that to mean that if we have been given

11 the right to use the owner's wiring, then we don't have to

12 worry about Marco Island Cable doing as they've done so many

13 times in the past, which is basically just coming in and

14 starting to use Comcast's wiring. So it means that we would

15 have the right to use the owner wiring and if Marco Island

16 wants to service there, they can come in and put their own

17 wiring in.

18 Q. Okay. And now let's move up to the top email. Go

19 ahead

20 A. And then I replied back, sounds like a plan. Maybe

21 we can discuss following the two meetings below.

22 Q. Okay. Now the third of these emails occurred on

23 August 4th, 2003. Correct?

24 A. Correct

25 Q. And did Mr. Kovacheff require your approval before

1 modifying the contracts in the manner he was proposing?

2 A. No, he did not require my approval for that.

3 Q. But he wanted your concurrence as by this time were

4 you in the regional office? You were a regional director of

5 commercial development?

6 A. I believe in 2003 I was regional. I believe the

7 other systems had been folded in.

8 Q. Now let's move to Exhibit 212. But before I put this

9 up, let me ask you whether you recall what discussions may

10 have occurred among you and Mr. Kovacheff and Ms. Mello, if

11 she was involved, about the change in the language of the

12 Belize, Vera Cruz contracts?

13 A. Specifically, I don't recall, but based on the email,

14 there were a couple of opportunities that it sounded like we

15 probably did discuss at the meetings mentioned in this

16 original document

17 Q. Okay. But did you agree together to adopt the

18 language that was the subject of Mr. Kovacheff's

19 recommendation and Ms. Mello' modification of the drafts?

20 A. Yes, I believe we all agreed that that was the way to

21 handle this particular negotiations.

22 Q. To keep you safe from Marco Island Cable?

23 A. To have the exclusive use of the owner wiring.

24 Q. To keep you safe from Marco Island Cable?

25 A. To keep Marco Island from utilizing it and having to

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1 install their own.

2 Q. Okay. Now, we're talking about Belize and Vera Cruz

3 here; correct?

4 A. I believe those are two of the three that we're

5 talking about.

6 Q Okay Well, isn't it true that there were dual

7 wiring systems at Belize and Vera Cruz?

8 A I was not aware that there were dual wiring systems

9 at the time that these discussions were going on at all. I

10 don't think any of us knew that they were putting in wiring

11 for a satellite system, and what I've -- what I understand

12 now is that that dual wiring is intended for a satellite

13 system.

14 Q Okay. So let me step back, though, before going on

15 to the next question. But you heard Mr. -- I guess it was

16 Mr. Boggs who was here yesterday who had -- no, it was --

17 yes, it was. It was -- yeah, it was Mr. Boggs who was there

18 who said that that system is not just for satellite. You

19 can use satellite or Marco Island or Comcast or any

20 combination of those wires, but you're saying you didn't

21 know that at the time?

22 A I'm saying that we didn't negotiate the contract with

23 Mr. Boggs. We negotiated the contract with WCI, and at the

24 time, the intent was that Comcast was going to be using the

25 internal wiring. I don't recall discussions or being

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1 advised that WCI was installing multiple systems. My

2 understanding was that they were going to install the

3 internal wiring, allow Comcast to utilize that during the

4 term and then at the end of the term, that would be their

5 wiring.

6 Q Okay, and how long was the term of this agreement, by

7 the way, or these agreements?

8 A. I believe that these were 20 year non-exclusive
9 agreements

10 Q. And what about the exclusive right to use the
11 internal wiring, how long were those?

12 A. During the term of the agreement, Comcast would be
13 utilizing that wiring. The agreements, themselves, however,
14 were non-exclusive agreements, and that way, anybody could
15 come in. The owner wiring, though, was going to be utilized
16 for Comcast pursuant to the agreement that we were
17 negotiating with WCI.

18 Q. Okay. And so you assumed that this would keep you
19 safe from Marco Island Cable for 20 years?

20 A. I assumed that what they would do is it would allow
21 us to use the wiring uninterrupted and it would allow
22 Mr. Gaston and his organization, if they wanted to, or if
23 even WCI was going to allow them to, to put their own
24 cabling in or make some kind of other provision with WCI to
25 have wiring put in for them as well.

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1 Q. Okay. Now, we're talking about the Belize and its
2 sister, the Vera Cruz. Now you saw pictures of those
3 yesterday. Did you have any idea at the time you were
4 negotiating this what the Belize and the Vera Cruz were
5 going to look like?

6 A. I had a pretty good idea of what the communities were

7 going to look like because they're in a section of -- of
8 Marco Island that has very similar existing buildings. So
9 if you've been down there, you kind of know what they look
10 like. So I was definitely familiar with what the buildings
11 were going to look like.

12 Q. You seriously believe that Marco Island Cable was
13 going to put in a separate system in those -- those
14 buildings?

15 A. I believed that if Marco Island Cable wanted to
16 negotiate with WCI, that WCI had extended this in our
17 contract, to put in wiring, that if he wanted to talk to
18 them about doing the same, that he would certainly approach
19 them about doing that.

20 As it turns out, Marco Island Cable does service
21 the mass majority of both of these properties. They have
22 the larger number of customers. So apparently, WCI did put
23 wiring in for both companies and both companies are there.

24 Q. I guess Marco Island Cable was pretty lucky that that
25 was the case?

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1 A. I considered that we were pretty lucky that we had
2 exclusive use of the owner wiring during the term and we did
3 not make that capital investment only to have that
4 investment taken away.

5 Q. I hear you. Okay. Now let's turn to Number 212.

6 A. Do we want to skip the email in between or -- there's
7 an email that's dated in between these. There's one the

8 4th

9 Q Yeah, okay.

10 A Then we have this email of the 5th.

11 Q Okay, that's fine. Let's do that. Go ahead and read

12 this. It's hard to read, but its text is -- go ahead and

13 read that, if you would, please.

14 A Okay. Do you want me to read the entire email? I

15 can.

16 Q It's not very long and it's important, so please go

17 ahead and read it.

18 A Okay, this is an email from Nikki Mello to WCI

19 Communities. Craig, I'm sorry I missed you the other day

20 when I visited WCI to pick up the Hammock Bay agreements. I

21 was hoping to get a chance to meet with you in person, but

22 I'm sure we'll have another opportunity soon. Getting the

23 Hammock Bay agreement finalized was a big accomplishment for

24 both WCI and Comcast. We all worked very hard together to

25 come up with agreed upon language that Stephen Pierce felt

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1 comfortable with, and I'd like to start with an agreement

2 similar to the Hammock Bay agreement for Belize and Vera

3 Cruz rather than starting from square one again. I'm

4 sending you identical agreements, except for the names, for

5 you to review for these properties. Our situation on Marco

6 is very unique in that 99 percent of the MDU properties

7 there are bulk. However, I understand that since the budget

8 was already put into place for Belize, WCI cannot sign a
9 bulk agreement for them.

10 What I plan to do is approach the board as soon as
11 you turn over, with your help in notifying me when that
12 happens, so that I can present them with a proposal -- with
13 a proposal to bulk the property at a significantly reduced
14 rate. My feeling is that they will jump at the chance to
15 pay a rate that is a discount of over 60 percent below
16 retail rates for service.

17 That being said, I hope we are okay with the minor
18 modifications that were made to the attached agreements from
19 that of the Hammock Bay agreement. You will notice the
20 agreement is still a 20 year non-exclusive, as was Hammock
21 Bay. The only difference is that Comcast is asking for the
22 exclusive right to use your internal wiring without taking
23 over any ownership of that wiring. Knowing that the
24 property is most likely going to be converted to bulk,
25 hopefully before C.O., I'm hoping this will not be a

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1 problem. Please review the agreements and let me know if
2 you have any concerns or questions.

3 I would like to get these agreements executed in
4 short order so that we don't run into the same situation as
5 Hammock Bay where residents were already living there before
6 Comcast was able to provide services. I look forward to
7 talking with you soon. Thank you for your time in advance.

8 Q. Okay, thank you.

9 MS. LARSON: Your Honor, may I approach the
10 witness? We have her witness book, for whatever reason.
11 MR. BALLER: You were putting back other exhibits.
12 THE COURT: Sure.
13 MS. LARSON: Thank you.
14 BY MR. BALLER
15 Q. Now, Ms. Delgado, I'm going to give you the -- you
16 have the Belize agreement in front of you?
17 A. Yes, I do.
18 Q. Okay. May I ask you to turn to Paragraph --
19 MR. BIANCHI: Your Honor, could we have the
20 exhibit number?
21 THE COURT: Please.
22 MS. LARSON: 8
23 BY MR. BALLER
24 Q. Ms. Delgado, is the last sentence of Paragraph B,
25 Subparagraph B at Paragraph 1, which is before you there,

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1 the last sentence there, is that the language that
2 represents the exclusive right to use that we're talking
3 about? And please, if it's -- if that's so, please read it
4 into the record.
5 A. Yes, I believe that that is.
6 Q. And so would you please read it into the record?
7 A. Yes, sir. Company agrees that maintenance, service
8 for the owners system shall be available to the owner upon

9 request at the company's then current rates for labor and
10 materials. Owner hereby authorizes company the exclusive
11 right to utilize any and all portions of owner's system as
12 needed to deliver the services within and throughout the
13 premises.
14 Q. Okay. So I actually meant only to read the last
15 sentence, but since you've read the one before, let me ask
16 you a question about that.
17 A. I didn't see the periods. Sorry.
18 Q. Okay. No problem, no problem. The sentence before
19 indicates that maintenance was not -- you were not providing
20 maintenance free in this instance; is that correct?
21 A. Correct. And in this instance, both parties agreed
22 that the owner system would be maintained by the owner
23 unless they wanted us to do the work, and then they would
24 let us know.
25 Q. Okay. And the phrase "as needed to deliver the

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1 services within and throughout the premises" you have
2 testified that the day before when you had this exchange
3 with Steven Kovacheff you were not aware that the Belize had
4 dual cable systems; is that correct?
5 A. At the time that we were negotiating this, I don't
6 believe any of us knew that there would be dual systems. So
7 the wiring -- of course we were assuming it was going to be
8 one wire and it turned out it was multiple wires. So it
9 really was kind of the best of both worlds because with the

10 one wire, we can obviously deliver services pursuant to this
11 agreement with no interruption.

12 Q. Okay. Could we now move to the next sequence of
13 emails on Exhibit 212, and would it be fair to say that the
14 same convention that we discussed before, that one reads
15 from the bottom up to get the context, is the way to do
16 this?

17 A. Yes.

18 Q. Okay. So let's start with the bottom one, and we
19 have here an email from Ms. Mello to you and to Steve
20 Kovacheff, and this time, the subject line reads, Belize and
21 Vera Cruz WCI agreements. Now, we haven't been focusing on
22 Vera Cruz, but was it your understanding that you were
23 negotiating both the Vera Cruz and Belize contracts
24 simultaneously?

25 A. Yes, that was my understanding. They're on the same

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1 point there in Marco where there -- there's multiple
2 buildings there. So yes, it's a sister property

3 Q. Okay. Now, would you kindly read the first email
4 into the record?

5 A. Yes. Nikki writes, just thought I would pass along
6 that these -- that I received these signed agreements today
7 by courier. Craig called me and left me a message telling
8 me that he had Stephen take a look at them and he made only
9 minor changes that he thought we would not object to, and in

10 the interest of expediting the whole process, Craig went
11 ahead, signed them and sent them to me. Changes do not look
12 like a problem to me at all. He was kind enough to send us
13 the red lines along with the signed agreements. What's
14 really good is that either they did not catch or they did
15 not care that we asked to be granted the exclusive right of
16 their internal wiring for the term of the 20 year
17 non-exclusive agreement. I will process the files along
18 with the red lines enclosed for Steven to review when he
19 gets back, but again, I don't think they will be a problem.
20 I guess Stephen Pierce appreciated the little thank you note
21 and Comcast mug I sent him after Hammock Bay because he
22 certainly got right on this one for us. And then there's a
23 computer smily face. So
24 Q. Okay. Go ahead and finish.
25 A. This is a total of 271 units.

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1 Q. Okay. Who is Craig?
2 A. Craig is the WCI person that was previously emailed
3 in Nikki's prior email that she negotiated the contract with
4 at the property, along with Stephen Pierce, who is the
5 attorney mentioned in this email that looked at the
6 agreements and made a few minor changes.
7 Q. Okay. Now, the sentence, what's really good is that
8 they either did not catch or did not care that we asked to
9 be granted the exclusive right to use their internal wiring
10 for the term of 20 years, 20 year non-exclusive agreement,

11 exclamation point, what did you -- what was your reaction to
12 that sentence?
13 A. Well, my reaction is I didn't -- and I don't really
14 understand what her intentions were when she wrote that.
15 Nikki is a sales executive. She works on commission
16 Obviously any sale that she can -- can secure is a good
17 thing for her. You can see she was obviously excited,
18 exclamations and smily faces included. So I don't know, but
19 previously that point exactly is what she referred to in the
20 email I just read to you. So I would assume that they felt
21 it was acceptable because he reviewed it with their
22 attorney, Stephen Pierce, according to this email. So I'm
23 not sure exactly what or why she pointed that out. But
24 Q. Did you ask her?
25 A. No. I mean, we discussed that that would be the way

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1 that we wanted to proceed, and I think she was happy that we
2 were able to do that in this agreement. We did not have to
3 do the internal wiring. We had the exclusive use of the
4 owner wiring, and I think she was just excited that -- that
5 that change made it through.
6 Q. But what she was referring to in this sentence is
7 that they either did not catch or did not care that we asked
8 to be granted the exclusive right to use their internal
9 wiring for the term of 20 years, that's what she was excited
10 about; is that correct?

11 A. I think she was excited that she received the signed
12 agreements today by courier and that the changes seemed
13 minor. She mentions that she wasn't sure what their
14 reaction was to the fact that we were requesting the
15 exclusive use of the wiring and she's pretty clear that she
16 wasn't sure if they either just overlooked it or if they
17 just didn't care about it. She pointed it out to WCI
18 specifically to make sure that they were aware of it in the
19 August 5th email that I read earlier. She very specifically
20 mentions that that's a change in these documents.

21 So he was obviously aware of it, and I'm sure if
22 they had any concerns with that, he would have addressed
23 that with his attorney. So my -- I would look at this and
24 think that their attorney obviously must have known and
25 thought it was okay. Maybe their attorneys knew that they

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1 were putting in multiple wires. I don't know. At the time,
2 we didn't, but
3 Q. Well, let's pursue that for a second. Is it possible
4 that they did not care because the language, as needed to
5 operate the system, in a building where there are dual
6 systems means that you would not need to use the system that
7 a competitor would use, so is it that -- is that possibly
8 why they did not care? Let's use that one.
9 A. I believe it's possible that they did not care
10 because maybe they knew they were putting in multiple
11 systems and they gave us the exclusive right to use one, and

12 that's all we were worried about. So we've -- we've been
13 very satisfied with these agreements and have had no
14 complaints whatsoever. And again, we compete there. We
15 both have cable customers. Marco Island Cable has, I think
16 somewhere upwards of 122 customers. I think Comcast has,
17 like, 28. But we're there and we're competing and we're
18 satisfied with how these agreements worked out
19 Q. Did you share Ms. Mello's feelings as expressed by
20 this paragraph, this sentence?
21 A. No.
22 Q. No? In what way didn't you?
23 A. Well, I don't know if she's saying either they didn't
24 catch it -- I'm not sure. She seems to be questioning it
25 I didn't question it because we had all had discussions with

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1 it and I knew that she had been having discussions with WCI,
2 so ...
3 Q. Okay. But you didn't say to her, look, we're talking
4 about entering into a 20 year relationship with these
5 people, find out whether they didn't catch this. You didn't
6 say that to her?
7 A. No, because I know that I've worked with WCI in the
8 past, as I have with other large developers, and I feel very
9 certain that they've got a lot of attorneys that are not
10 going to allow language to slip through that they're not
11 satisfied with. And in addition to that, in addition to

12 Nikki mentioning it to Craig Klingensmith of WCI, Craig also
13 told her that he -- he left her a message and said that he
14 had reviewed it with his attorney and his attorney made
15 changes. So they obviously reviewed the document and went
16 through and made whatever changes they felt were needed.
17 Q. Okay. Well, let's just assume that it's either they
18 didn't care or they didn't catch it. Either way, you got
19 your language in --
20 MR. BIANCHI: Objection, Your Honor. It calls for
21 speculation.
22 MR. BALLER: I'm asking her to assume. She can
23 correct that if she wishes
24 THE COURT: Well, I don't know what the question
25 is, so let's --

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1 MR. BALLER: Yeah, I haven't finished it, in any
2 event.
3 BY MR. BALLER
4 Q. Let me just say it's immaterial which of the reasons
5 were, they did agree with it and you didn't know at the time
6 that there were two -- or dual systems there, so you
7 assumed -- is that correct that you assumed that you would
8 be safe from Marco Island for 20 years now? Is that
9 correct, based on the string of emails?
10 A. I -- my feeling on this was that we would be safe
11 from Marco Island using that cable that we had been given
12 the use of. It's a non-exclusive agreement. So in terms of

13 being safe from Marco Island and not having to compete with
14 them, absolutely not. Comcast has wired and maintained
15 properties all over the place and Marco Island is utilizing
16 that wire in many, many cases. Comcast made a decision that
17 we would negotiate with WCI to not have that happen in these
18 cases. We would let WCI, if they wanted to choose Comcast,
19 and apparently they did, that we would allow them to put in
20 the wiring, we would allow them to own it, we would have the
21 agreement completely non-exclusive, allowing other providers
22 to either put their own in -- these were new construction,
23 too, by the way. So to either put their own in at the time
24 or make some other provision. So that would be --
25 Q Okay. And you were in the courtroom yesterday when

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1 we passed around the magazine that was admitted into
2 evidence showing what Belize looked like and presumably its
3 sister, Vera Cruz, and you're saying that you expected Marco
4 Island Cable to build a separate system there to be able to
5 compete?
6 A. Actually, the buildings were still under construction
7 and it would have been extremely easy to do that. It was a
8 pre-wire situation, not a post-wire situation. The
9 buildings were under construction. Pre-wire is very
10 different than post-wire. Pre-wire means the walls are
11 open, everything's open. Our agreement was non-exclusive
12 and therefore, they could have been in there, and we assumed

13 they were in there, talking to WCI. So yes --
14 Q Okay -- I'm sorry, I didn't mean to interrupt. So
15 let's now move up the chain and discuss the email of
16 August 19 at 4:46 p.m. And please -- and that's from you.
17 This is your response, your contemporaneous response to
18 Nikki Mello and Steven Kovacheff; all right? Go ahead and
19 read it, please.
20 A Okay. Great news. I'm glad we made that change to
21 the language. It certainly does not hurt to send follow-up
22 notes and prizes like the one you sent Stephen Pierce.
23 Let's scratch these two off our at-risk projects we're
24 working on. I do not think it's important for technical to
25 be involved with monitoring Marco Island Cable activity in

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1 these two. I want to make sure the lock boxes are locked,
2 also that they are tagged with property of Comcast stickers
3 on our equipment. Our contract allows us the exclusive use
4 of the system during the term. If Marco Island Cable wants
5 in, they must post-wire, including inside the units. If we
6 inadvertently allow him to slip in and start using the
7 wiring, it will be very tough to get him out of there with
8 a -- without a major court battle. Based on my conversation
9 with Gaston during our trip to Cozumel, I know he intends to
10 be in Belize. Let's discuss. Thanks, Terese.
11 Q Okay. Let's scratch these two off our list of
12 at-risk projects we were working on. What is your at-risk
13 list of projects?

14 A As I'm assuming with most businesses, you look at
15 your customer and your client list. We keep a list of all
16 of our customers, when their contracts are expiring. We
17 evaluate as those contracts are either coming up for renewal
18 or being built in a new construction situation, we evaluate
19 the risk of those as we're trying to negotiate.

20 I realize that there might be a conception out
21 there that cable TV is not a competitive business,
22 especially where there might be only one franchised operator
23 to choose from, but in commercial development, we look at
24 the business very different than that. It's a very
25 competitive business. There are other providers. There are

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1 satellite companies. There are franchised operators.
2 There's -- there's a lot of potential competition. That
3 competition puts the existing properties at-risk of going
4 somewhere else and it puts the new build properties at-risk
5 of going somewhere else. So the at-risk list obviously on
6 Marco, it's pretty clear with 91 percent of the market that
7 Mr. Gaston's a fantastic competitor, and these new build
8 properties were -- were definitely on our list. They were
9 on the list of potentially us not being able to provide
10 service.

11 Q And in this instance, you did not negotiate for an
12 exclusive right to provide service; correct?

13 A Correct.

14 Q What you negotiated for instead was an exclusive
15 right to use the internal wiring; that's correct?
16 A Correct You know, there are probably, just like
17 there are with just about every contract that's negotiated,
18 there's backs and forths with the developers, and the
19 developer may have been the one that wanted it to be a
20 non-exclusive agreement, which we were fine with I know
21 our primary issue was we wanted to be able to use that
22 internal wiring and know that we weren't spending the money
23 to put that wiring in only to not have the use of it.
24 Q Okay And let's move up now to the third email on
25 this chain and that is from Nikki Mello back to you and

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1 Steven Kovacheff. Go ahead and read it, please.
2 A Did you want to move it?
3 Q Oh, I'm sorry. Of course I want to --
4 A It's actually larger here than it is here.
5 Q Okay.
6 A Nikki writes, I will be very specific in my work
7 order to construction and I'll talk to them about it as well
8 to make sure they understand My intention is to work with
9 Craig, and as soon as they turn over to the association, I
10 would like to get them bulk so that we don't have to worry
11 about Marco Island Cable moving in on our territory, as we
12 know he will try to do. Craig knows this to be my
13 intention, which is why I think he pushed through the
14 contracts without a lot of changes. I'll keep you posted on

15 when I hear they will turn over so that we can agree on a
16 rate to go to them with I think as long as it's fair,
17 Marco fair, we won't have to go lower than what we want to
18 for 2004, unlike some of the win-backs we're trying to get,
19 because we'll have a brand new contract and show him that it
20 gives us the exclusive wiring usage. Thanks.
21 Q. Now, did you agree with this statement, or with
22 Ms. Mello on this, on what she said in this paragraph?
23 A. To a certain extent. I said, "Thanks, Nikki. Let's
24 be sure not to wait until turn-over. Marco Island Cable
25 will slip in there long before that, I feel certain

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1 Steven, just to be safe, can you add this topic to your
2 commercial development technical meeting with Mike
3 Davenport? Thanks, Terese."
4 Q. Let's go back to the sentence in Ms. Mello's email,
5 and I'd like to ask you about that. I think as long as it's
6 fair, Marco fair, we won't have to go lower than what we
7 want to for 2004, unlike some of the win-backs they're
8 trying to get because we'll have a brand new contract to
9 show them that gives us exclusive wiring usage.
10 What do you think that Ms. Mello meant by that
11 statement?
12 A. I'm certain that she was talking about the rate, the
13 bulk rate, when she says as long as it's fair, Marco fair.
14 Marco Island Cable has been obviously very successful with

15 very, very low bulk rates. So one of our competitive
16 strategies, obviously, to try to save our business and win
17 new business is to bring our rates down. Obviously that
18 means cutting into profits, but we want to have our
19 business, we want to save it, and so I'm sure that she's
20 referring to rates here.

21 Q. Okay. Now, we won't have to go lower than what we
22 want to for 2004, unlike some of the win-backs we're trying
23 to get. What is the comparison that she's drawing? Unlike
24 what?

25 A. I'm not a hundred percent clear on what her

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1 comparison is. I believe that she's probably referring
2 to -- remember, Nikki Mello is an account executive. So
3 she's following a marketing strategy that we're trying to be
4 competitive and being out there, in the case of some of our
5 win-backs. And when I say win-backs, I mean in the
6 continuing effort to grow the business and to talk to
7 customers that maybe are not with Comcast but at some point
8 may be in the future. That would be considered a win-back
9 for Comcast. We may have served the property in the past,
10 we don't service it now. If we service it in the future, we
11 would have won it back. So that's what win-back means.

12 Q. And so she says you won't have to lower your rates at
13 these properties to the level that -- unlike some of the
14 win-backs we're trying to get, because we'll have a brand
15 new contract to show them that gives us exclusive wiring

16 usage. What did she mean by that?

17 A Well, on our win-back strategies, one of the things
18 that we've done, because we're already servicing those
19 communities, if we've given an incentive or a month free or
20 something to win them back, I'm assuming that she may be
21 talking about the differences between that.

22 This would be a brand new bulk contract, so
23 whatever that might be might be negotiated at that time with
24 the customer. Also, I would assume, based on this -- and
25 just based on in general, Nikki had probably been given

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1 guidelines as to, you know, rates. She's the account
2 executive, so she would -- she would turn to us to say,
3 here's where you need to be within rates and if you want to
4 do anything other than that, you need to discuss that and
5 get approval for that. So

6 Q Well, I'm trying to understand what she means that
7 because we'll have a brand new contract to show them that
8 gives us exclusive wiring usage. How does -- what does
9 "because" mean in that sentence?

10 A I can't say what "because" meant. Nikki wrote this
11 email and I just can't speculate on that.

12 Q May I -- let me suggest something and then you tell
13 me whether you agree with it or not. Could it be that
14 Ms. Mello is saying that because Mr. Kovacheff instructed
15 her to put an exclusive right to use clause into the

16 agreement and with your consent, Comcast did, now that you
17 have exclusive wiring usage, you don't have to lower your
18 rates as you might otherwise have had to do in these
19 win-back situations? Is that -- is that what she meant or
20 is that what it might mean to you?
21 A. I don't think that that's what she would have meant.
22 I don't think that that would have been the -- the intent.
23 I think that typically, when we negotiate a contract, you're
24 negotiating the main, the main contract that includes the
25 bulk information and its all there. I think what she was

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1 saying is we already have the base agreement, the right of
2 entry agreement to provide services there, possibly -- and
3 again, I can't speculate what she meant. It was her email.
4 Possibly what she meant is that it would be just the bulk
5 rate that they would have to negotiate
6 Q. Okay. Okay, now, at the time this email exchange was
7 occurring, were you aware of the dual systems at the Vera
8 Cruz and Belize?
9 A. No, I was not aware at all.
10 Q. When did you become aware of that?
11 A. I don't remember exactly when I actually had visited
12 the property in my preparations, saw what I believed to be
13 two lines, each tagged. I'm somewhat familiar with this
14 description, as we've seen here. I also saw plenty of empty
15 home run conduits, as well, that are in this building, but
16 primarily, what I noticed is that there are two

17 Clearly, we realized that there are two because
18 Mr. Gaston also services there and he has the majority of
19 the customers and, as I mentioned, Comcast is satisfied with
20 this agreement. It has never had any contention or any
21 problem with Marco Island Cable being there because we have
22 exclusive use of the owner's system, and that's really all
23 we requested in this -- in this contract.
24 Q Never had a problem with Marco Island being there?
25 A Well, obviously we would much rather the customers be

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1 our customers, from a competitive standpoint and from a
2 business standpoint. Our preference would be that customers
3 would choose Comcast. So I guess in that respect, I
4 could -- I guess you could say that the natural instinct
5 would be unfortunately, he's there and he's got the majority
6 of the customers. So ...
7 Q So when -- when, approximately, was the first time
8 you went to Belize, saw it with your own eyes?
9 A The first time that I went there and saw it with my
10 own eyes, I'm not sure that there were even residents living
11 there. But I don't recall. There may have been some
12 residents there. It was very early, and I saw it only from
13 the outside, not from the inside
14 Q Okay, but I'm -- let me clarify. I'm asking, when
15 did you come to know for the first time that there were dual
16 systems at the Belize?

17 A. Probably, to actually see it and confirm it, as soon
18 as I saw it tagged, which has only been recently. But also
19 knowing that Mr. Gaston has customers there and that's not
20 interfering with our wiring, so this is not a situation
21 where if a customer did choose to come to Comcast, it would
22 interfere, and that's been quite some time. I think right
23 from the beginning, he must have negotiated to be in there
24 at the same time as we were, and I don't know, he may even
25 have an exclusive use of a piece of wiring in there, as

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1 well.

2 Q. To your knowledge, did employees of Comcast ever tell
3 Mr. Gaston that he could not provide service at the Belize?

4 A. I believe in some document that I've seen here, or
5 maybe it might even have been -- I'm sorry, I apologize. It
6 might even have been from Mr. Gaston's testimony.

7 MR. BIANCHI: Your Honor, if -- may we have a
8 sidebar?

9 THE COURT: Is there an objection to something?

10 MR. BIANCHI: I believe the witness has been
11 invited to go into subject matter. I just want to make sure
12 that we follow the Court's prior rulings.

13 THE COURT: You may come to sidebar.

14 (At sidebar, Court and counsel present)

15 MR. BIANCHI: Your Honor, we had a prior sidebar
16 with -- I think that the document that the plaintiff is
17 going to is 212, which is my letter regarding Belize. I

18 just want to make sure that we follow the prior Court's
19 ruling with respect to the use of that letter.

20 THE COURT: Do you have it?

21 MR. BALLER: The letter's been admitted into
22 evidence.

23 MR. BIANCHI: It has, but it came with -- with the
24 issue of having to do with litigation and I want to make
25 sure that we follow the Court's prior rulings with respect

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1 to that.

2 THE COURT: Has the letter --

3 MR. BIANCHI: Been admitted, it has, Your Honor.
4 But obviously he's inviting the witness to talk about the
5 letter. The jury's already heard about the letter,
6 Mr. Gaston's direct. But the Court also directed counsel
7 what he could ask, not ask about the letter. The letter
8 doesn't threaten litigation. That's what the Court
9 admitted. This is a warning to Marco Island Cable not to
10 use Comcast's wires it has on Belize; that's all. And I
11 just want to make sure that before counsel comes forward and
12 says, weren't you threatening litigation with Marco Island
13 Cable, the whole purpose that the letter came in was that it
14 didn't threaten litigation, and I just want to make sure we
15 follow the same --

16 MR. BALLER: I have no intention of using it for
17 the purpose that Mr. Bianchi suggests.

18 THE COURT: Okay.

19 MR. BIANCHI: Thank you, Your Honor.

20 (Sidebar concluded)

21 BY MR. BALLER

22 Q I would like to see if I can go back to where we were

23 a few minutes ago. You didn't know at the time of this

24 email string that there were dual systems in the Belize?

25 THE COURT: Mr. Baller, how many times are you

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1 going to ask that question?

2 MR. BALLER: Okay. You're right; you're right.

3 BY MR. BALLER

4 Q. Can we pinpoint in time, by year if necessary, and

5 then fine tune, when you came to learn that there were dual

6 systems in the Belize?

7 A. No, I just don't know exactly when I came to learn

8 that. It's just not a date that I -- that stands out for

9 me. From Comcast's perspective, the fact that Mr. Gaston is

10 there providing service has never interrupted Comcast's

11 ability to provide services. So we're providing services on

12 the property to residents. He's providing service. The

13 date that we discovered there was a dual system is just not

14 a date that I know.

15 Q. Did you know it by 2005, January, 2005?

16 A. I would say that by then, yes, we knew that, that

17 there were more -- more home runs and dual system in there.

18 Q. How about mid 2004?

19 A. If I could give you a date, I promise, I would give
20 you a date. I just -- I don't know. I feel certain that
21 probably I knew maybe a little bit later in terms of a
22 confirmed understanding of it. I'm certain that I knew that
23 probably later than our technical staff, who would be
24 on-site and who would see it.
25 Q. Okay. Let me ask you to take a look at Plaintiff's

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1 Exhibit 11, please. And can you identify this document?
2 A. This is a legal document. Oh, sorry, guess I should
3 look here. Yes.
4 Q. What is this document?
5 A. This is a document from White & Case to Louis
6 D'Agostino regarding Belize, from Mr. Bianchi from
7 White & Case.
8 Q. And you received a copy of this letter; correct?
9 A. Correct.
10 Q. And was this letter written in June of 2004,
11 June 22nd, to be exact?
12 A. Based on the date on the letter, it was written that
13 day.
14 Q. Okay. Does this letter fresh your recollection as to
15 when you found out there were dual systems?
16 A. If I could just take a second and read it.
17 Q. Please, by all means.
18 A. I don't see that the letter indicates that there are

19 dual systems. I think it just states that Comcast does not
20 own the owner wiring and that Comcast has the exclusive
21 right to utilize the wiring pursuant to the agreement.
22 Q. Okay. So that doesn't help you -- let me ask the
23 question directly. You don't know whether you knew at the
24 time this letter was written whether -- let me say that so
25 that I don't imply the wrong thing.

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1 You can't tell from this letter whether you knew
2 at the time this letter was written whether there were dual
3 systems at the Belize?
4 A. This letter's simply referring to our agreement with
5 WCI stating that we have the exclusive right to use the
6 service, to use the wiring. And it goes on to say if Marco
7 Island should choose to provide service, that they should do
8 so without interfering with the wiring that Comcast is
9 utilizing.
10 Q. Okay. When did service at the Belize begin for
11 Comcast?
12 A. I don't know the exact date that services commenced
13 I believe in -- I believe in late 2003.
14 Q. Okay.
15 A. It may have been earlier. I'm not sure.
16 MR. BALLER: Okay, thank you. I'm ready to move
17 on to another topic. May I approach the bench with
18 Mr. Bianchi, please?
19 THE COURT: You may.

20 (At sidebar, Court and counsel present)
21 MR. BALLER: I now have a series of exhibits that
22 contain financial information, and before getting into this
23 information, I want to be sure that I'm handling it the
24 right way. And may I suggest that Mr. Bianchi and I take a
25 few minutes to look at the information to find out whether

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1 he has objections to its use and then perhaps we can
2 eliminate some of these from his list of concerns.

3 MR. BIANCHI: I have no problem with that, Your
4 Honor. I've always just asked, give me a heads-up if you
5 want to use a business document, could probably take care of
6 any problem that we would have with it.

7 THE COURT: Can you go ahead and do that here?

8 MR. BIANCHI: It would just take a few moments, if
9 it's okay.

10 THE COURT: Go ahead.

11 (Pause in place, discussion off record)

12 MR. BIANCHI: Your Honor, we have no objections
13 with these. It just dawned on me with respect to the
14 previous letter, we had moved to keep it out because of the
15 issue of the litigation, but the Court ruled that it was
16 admissible. I think I may have misspoken when I argued the
17 last objection. And I just want to make sure that that's
18 clear.

19 THE COURT: All right. What was clear is it was

22 MR. BIANCHI: No objection, Your Honor.
23 THE COURT: Let me make sure I've got the numbers
24 right. 112, 118, 95, 63, 66, and 121. With 112 there's
25 three separate Bates numbers.

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1 MR. BALLER: Correct. I move the admission of all
2 those documents.

3 THE COURT: All right. Those exhibits will be
4 admitted without objection.

5 MR. BALLER: Thank you
6 (Plaintiff's Exhibits 63, 66, 95, 112, 118, and
7 121 admitted)

8 BY MR. BALLER

9 Q. Ms. Delgado, earlier you testified that Comcast does
10 what you called payback analyses to determine whether -- let
11 me stop there and let you -- let you, instead, characterize
12 what payback analyses are for Comcast.

13 A. As I've mentioned earlier, we do a payback analysis
14 when we're looking at investing capital into a project,
15 whether it be a new build project, an existing project. And
16 this would be an example of the type of payback that --
17 analysis that we use.

18 Q. Okay. And am I correct that you testified that your
19 reasons for having exclusivity are to ensure that you are
20 able to -- that you are able to make a return on your
21 investments in properties?

22 A That's correct

23 Q Okay. Now, this is very hard to read, so I will try
24 to use the magnifying function as well as possible. I'm
25 going exactly the wrong way.

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1 Okay, looking at the top of this agreement, do you
2 see there the project name, Belize, start date 6/20/2002?

3 Is that what you're seeing, too?

4 A Yes, that's 6/20 or maybe 5/20, but

5 Q Okay. And so this first block of capital cost
6 summary, where would I look there to find Comcast's
7 investment in cable home wiring or home run wiring, if that
8 were a capital investment that Comcast made at that
9 property?

10 A At this property, there wasn't such a thing. Some of
11 that may actually be included in plant miles. Some of that
12 would also be included down in pre-wires. It looks like
13 this payback analysis, they probably just took the -- the
14 figure that engineering gave them and just plugged it in
15 under plant miles within project.

16 Q Okay. So in this particular case, am I right in
17 reading the 20 year ROE next to the block here, right there,
18 see where my finger is?

19 A Yes, I see your finger.

20 Q What does that mean?

21 A 20 year Right Of Entry agreement is what was being
22 proposed under this particular analysis.

- 23 Q Okay, and are these numbers absolute numbers or are
24 they thousands or what are these numbers?
25 A Those would be absolute numbers.

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- 1 Q Okay. And so the total capital construction, the
2 total capital costs are 17,850 for that project; is that
3 correct?
4 A That is correct.
5 Q Okay. So let's now move down and annual projections
6 are plant extension, total construction, 17,850 in year one
7 and no further -- no further construction expenses for the
8 next ten years; is that correct?
9 A Right This is --
10 Q For the ten year period?
11 A Right. This would be an MDU, and once it's
12 constructed, there wouldn't be construction cost.
13 Q No maintenance cost?
14 A We don't put the maintenance costs in here.
15 Q Okay. Where do you put maintenance costs?
16 A As you work down in the document, you'll see that
17 there's an operating cash flow line and that factors with
18 the --
19 Q Let me get with you so that you can point to it and
20 describe what it does. I'm sorry, here, you literally can't
21 see the forest for the trees. But go ahead. Am I showing
22 enough for you to work with?

23 A. Yes, yes. I'm familiar with this. Basically, this
24 analysis that we use is very much a snapshot. It does not
25 contemplate every little situation here and there. It's a

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1 quick analysis that we utilize. What we do is we look at
2 what the operating cash flow -- we've got estimates that we
3 use based on what activities, what programming costs, what
4 operating costs we're going to incur, and that's what we
5 utilize in our analysis.

6 Q Okay. So if I may go down to the bottom line of this
7 block here, do you see under the column Year 1, \$14,268
8 cumulative cash flow right there?

9 A. Yes, I see that.

10 Q. Let me get a pen so I can make sure the jury is
11 following us. Right there. That line?

12 A. Yes, I see.

13 Q. Okay. Does that indicate to you that your payback is
14 profitable in year one and then continues to be profitable
15 from that point forward every year?

16 A. Yes. Based on the assumptions in this particular
17 analysis, if you go back over towards the left-hand side of
18 the page, you can see that they -- when we did this
19 analysis, which would have been pre-construction, we didn't
20 factor in whether or not Marco Island Cable would be there.
21 We wouldn't have been considering that, so we just assumed
22 an average basic penetration. As you can see, whoever
23 created this payback analysis used 75 percent. That

24 obviously is not the case, so obviously we've never made
25 these kind of profits there, but when this initial analysis

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1 was done, that's how it was generated.

2 Q. Okay. So when you developed this, you assumed that
3 you would have no costs for cable home wiring or cable home
4 run wiring and you would begin to show profit from year one
5 and that profit would increase to 170,673 cumulative over
6 the ten year period; is that correct? Reading down column
7 10, 10 year?

8 A. Yes, that is correct.

9 Q. Okay. And so at least as you plan this out, you did
10 not need a 20 year right of entry, exclusive right of --
11 exclusive control of the inside wiring in order to recover
12 your capital investment; is that -- is that true?

13 A. I would say that that is definitely true. That was
14 one of the reasonings behind wanting to negotiate the use of
15 that wiring

16 Q. I'm sorry -- I'm sorry, I didn't understand that. I
17 thought the conclusion here was that you projected getting
18 positive cash flow in year one and my question was, under
19 those circumstances, did you need a 20 year exclusive right
20 to use the internal wiring in order to protect your
21 investment and show a positive return on your investment?

22 A. No, no. In that case, that was the term that was
23 negotiated between WCI and Comcast. That was the term both

24 parties agreed to. So I'm sure that was factored in when
25 the analysis was looked at. But clearly, when you asked if

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1 we needed a 20 year agreement, that was what was negotiated
2 between both parties.

3 Q. Okay I didn't ask you whether it was negotiated or
4 arrived at any other way than through negotiation. I'm just
5 simply asking whether the justification that you gave
6 earlier that the reason for doing payback analyses, among
7 others, is to determine whether your profit -- your project
8 would turn profitable, and one of the reasons you gave for
9 having exclusivity arrangements was to be sure that you get
10 a positive return on your investment. And I'm simply saying
11 that in this instance, at the time you were planning this
12 out, you did not need a 20 year exclusivity arrangement in
13 order to get a return on investment, particularly on cable
14 home wiring and home run wiring, because you weren't making
15 any investment in those; is that correct?

16 A. I think I answered that, no, we did not need a 20
17 year agreement.

18 Q. Okay.

19 A. However, that's what was negotiated.

20 Q. Okay. Next, let me turn to Exhibit Number 95.
21 Before we get into the details of this document, could you
22 please tell me whether this document is a form of some kind
23 that Comcast uses?

24 A. Yes, this is a new contract cover sheet that the

25 Naples system utilizes. Most systems in our region do have

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1 some form of a cover sheet. There's not a standard Comcast
2 policy. They're usually created at the system level just to
3 track the terms of an agreement. They're also utilized for
4 our administrative representatives when they key in our
5 information into our database or maintain our files.

6 Q. So presumably, underneath this cover sheet would be
7 the raw documents that reflect the agreement and
8 correspondence and anything else that might help someone who
9 wanted to work with this property to get a history of this
10 property and the financial consequences of what the
11 agreements mean; is that correct?

12 A. That would be correct.

13 Q. Okay. And let's look at the comments at the bottom
14 of this document. And would you kindly read those comments
15 into the record, please?

16 A. Certainly. This is a new -- pardon me, this is a
17 renewal bulk agreement based on the new Marco rate card.
18 The ROE agreement that goes along with this is for a term of
19 6 years, so this agreement will expire one year before the
20 right of entry. The property will either have to renew
21 their bulk or go IB, or what that stands for is individual
22 billing, for one year if they decide to leave us for any
23 reason in 2007.

24 Q. First of all, ROE stands for right of entry?

25 A Yes, it does

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1 Q Let's make sure we explain what right of entry is.

2 What is right of entry agreement?

3 A A right of entry agreement is where we have an

4 agreement to service a property not on a bulk basis, like

5 we've been talking about here today, but rather on an

6 individually billed basis. Apparently, it looks like this

7 property was serviced possibly on a bulk basis, or I guess

8 it was on a bulk basis. They renewed the bulk, but the

9 right of entry term still had a year left on it

10 Q Excuse me, would you read the second sentence again?

11 I'm trying to understand how -- what you just said.

12 A It says the right of entry agreement that goes along

13 with this is for a term of six years, so this agreement will

14 expire one year before the right of entry.

15 Q Okay. Are you saying that the right of entry

16 agreement that goes along with this was not the -- was not

17 negotiated and agreed to at the same time as the bulk

18 agreement?

19 A That's entirely possible. A lot of properties have

20 right of entry agreements that have a different term, a

21 longer term, possibly, than the bulk addendum. You could

22 have, very often, a 20 year right of entry agreement with a

23 five year bulk addendum or a two year bulk addendum or a

24 three year bulk addendum. And then as those addendums come

25 up for expiration, they're negotiated between the parties.

1 Q. Is it a goal of Comcast to have a right of entry
2 agreement that is longer than the term of the bulk
3 agreements?

4 A. Not necessarily. Sometimes when we're negotiating,
5 the other party may say, we -- we like Comcast, we're happy
6 with Comcast, we just don't want to go longer on a bulk
7 basis, and we'll make that decision on shorter increment
8 time frames. So that's -- that's not an uncommon practice
9 at all in the industry.

10 Q. Okay. But in this case, you say that the property
11 will either have to renew their bulk or go IB for one year
12 if they decide to leave us for any reason in 2007. I read
13 that correctly; did I not?

14 A. Yeah, you said that I said it, though. I'm not sure
15 exactly who typed it. I'm assuming that it might have been
16 typed by the account executive.

17 Q. I'm sorry. I didn't mean to imply --

18 A. That's okay. I just wanted to clarify that.

19 Q. By no means did I mean to imply that. I mean the
20 document said this. So IB stand for what?

21 A. Some systems use the term IB. It stands for
22 individually billed. Some use ROE, more generically.
23 They're somewhat interchangeable terms. You can have an IB
24 agreement that would be similar to an ROE agreement.

25 Q. Okay. And how do IB rates compare to bulk rates?

1 A. Well, IB rates would be our standard non-bulk
2 published rates in the franchise area. So they would be
3 full retail rates.

4 Q. And you earlier said that in a -- in a condo on Marco
5 Island, your rates might range from a low of 11 to a high
6 of --

7 A. 20, in the 20s, 20.

8 Q. Okay, all right. And what would be the range of IB
9 rates in those condos?

10 A. The range would be 12 on up to probably, you know,
11 beyond a hundred if you want to take high speed internet,
12 digital cable.

13 Q. No, no, I don't. I should have clarified, just for
14 basic service, okay. Is there -- is there a average
15 differential between the bulk rate and the IB rate, you
16 know, within the reasonable range?

17 A. Yeah, I think I might have misunderstood your
18 question the first time. I apologize.

19 Q. It wasn't a very good question.

20 A. In terms of a range for IB residential rates, I'm not
21 exactly sure of what the rate card is for the limited basic,
22 but I want to say it's around \$12. So the range for those
23 basic services could be from \$12 up to \$47, \$48.

24 Q. Okay. So would it be fair to say that IB rates are
25 higher or significantly higher than bulk rates?

1 A. IB rates would be -- would definitely be higher on an
2 individual basis. They don't provide for the benefits of
3 doing a bulk agreement.

4 Q. Okay. So do I correctly understand that the
5 existence of a right of entry agreement that runs longer
6 than the term of the bulk agreement that you have with --
7 with the condominium means that the condominium is forced to
8 either renew or have their residents pay a significantly
9 higher rate, in this case for at least one year?

10 A. I wouldn't call it forced. We could either renew or
11 sometimes an association will decide that they prefer to go
12 IB. With seasonality in our markets, some residents might
13 say, I'm better off paying your retail rate of \$47 for the
14 two months that I'm here versus paying the bulk rate of \$15,
15 even though it's significantly discounted, for 12 months.
16 So I think that the reason that associations quite often
17 will have that is so that they have the flexibility to
18 decide at that point whether or not going individually
19 billed is actually better for them, where they don't have to
20 pay year-round, they can just pay for the -- you know, as a
21 matter of fact, I mean, some residents come down for one
22 month, two month, three month. Some are here for six
23 months, so they might decide bulk is better.

24 Q. Okay. Well -- okay. Well, suppose the term of the
25 ROE were the same as the bulk term. Would that mean at the

1 end of both of those agreements simultaneously the condo
2 would not have to renew or go bulk, but might work with a
3 competitor?

4 A. Yes, at the expiration of agreements, as we've seen
5 here from these many properties that have made that decision
6 at the end of their contract term, the contract is up for
7 negotiation. The property may decide, as Charter Club and
8 some of these other properties have decided, to go to the
9 competitor

10 Q. Okay, but the very idea of having a -- an ROE
11 agreement run longer than the term of the bulk is that that
12 would not be open to renegotiation at that time and would
13 therefore force the condo to either renew their bulk or go
14 IB for at least the term of the ROE; is that what this
15 means?

16 A. No, not at all. I mean, if a property said they'd
17 rather go bulk the entire time, then they're making a
18 commitment to us for a longer period of time for a hundred
19 percent of the units. So I'd say that that is not correct.

20 Q. I'm not sure I understand how that is responsive to
21 my question.

22 A. Okay.

23 Q. Let me restate the question, just to make sure that
24 we do have a meeting of the minds on this. I'm going to
25 read the sentence, the third sentence again, and ask you

1 whether my understanding of it is correct.

2 You've got a -- you've got now here a bulk
3 agreement that will expire one year before the exclusive
4 right of entry agreement. That's correct, okay? And then
5 we read that the property will either have to renew their
6 bulk or go IB, which would result in significantly higher
7 prices for one year if they decide to leave us for any
8 reason in 2007. And that's because of the existence of the
9 exclusive ROE; is that correct?

10 A. Yes. They're different terms, so there's one year,
11 one additional year left on this particular right of entry
12 There are agreements that have both. We have some that run
13 concurrent and we have others that have varying terms,
14 depending on, you know, what's negotiated. And this one
15 just happens to be that there's a year left on the right of
16 entry agreement. So either they're going to tell us that
17 they want to stay bulk or they're going to go retail. And
18 if they go retail, it's not necessarily an advantage to
19 Comcast, with seasonality. So my comment -- I thought I was
20 answering the question. Sorry.

21 Q. Okay, but the one thing that this also does is it
22 prevents them from leaving Comcast because of the exclusive
23 right of entry. So you have -- you have essentially held
24 onto their business for at least one year?

25 A. I think it's no different, whether it's a retail

1 right of entry contract or whether it's --

2 MR. BIANCHI: Objection, Your Honor, objection to
3 the question. We don't even have the agreement and all
4 we're looking at is one line of this.

5 THE COURT: Objection's overruled. Little bit
6 late to make that argument.

7 MR. BALLER: I'm sorry, please continue.

8 THE WITNESS: I'm not sure where I left off. I'm
9 sorry.

10 BY MR. BALLER

11 Q. Feel free to start wherever --

12 A. Wherever? I would just say that in this situation,
13 there happens to be one year left on the right of entry
14 agreement. I would explain that in some cases, the right of
15 entry term is not the same as the bulk term. There's a
16 preference in some cases on the part of the association or
17 the developer to have a shorter term. That's not to force
18 the association, rather it's to allow them to have the
19 flexibility to change it.

20 If they decide that they don't want to be bulk,
21 they would go IB, but that is not necessarily an advantage
22 to Comcast, and I think you're somewhat implying that
23 because the rates are higher that would be an advantage.
24 What I'm explaining is that with seasonality, some of those
25 residents would only subscribe for maybe eight weeks when

1 they're here in Marco Island visiting their condo. And in
2 some cases, they might not even subscribe if they're only
3 here two and three months. They might not even bother,
4 so

5 Q. I'm sorry, I didn't mean to interrupt.

6 A. That's okay. I hope that answers your question.

7 Q. Well, my question really focused on whether they
8 could get a bulk agreement, or IB agreement, or whatever
9 their choice is with some other provider than Comcast for
10 the year after their bulk agreement with Comcast expires?

11 MR. BIANCHI: Objection, Your Honor, asked and
12 answered several times.

13 MR. BALLER: Okay, asked and answered. That's
14 fine with me.

15 THE COURT: All right. Fine with me, too

16 MR. BALLER: Let's go next to Exhibit 112, and in
17 particular, MIC 012067. This one is really difficult to
18 read.

19 BY MR. BALLER

20 Q. Now, this document from -- can you describe the form
21 of this document, what kind of analysis this is?

22 A. I believe this was a competitive analysis, and I'm
23 not very familiar with this right off the top of my head,
24 but it was definitely a potential win-back that was being
25 analyzed.

1 Q. And the term win-back to you means?

2 A. As I've defined it earlier, means that if there's a
3 property that we are not servicing and we're attempting to
4 win that back, if we win it back, it's a win-back.

5 Q. Okay. And this is for Summit House on Marco Island;
6 is that correct?

7 A. Yes.

8 Q. Okay. I'm sorry to jump in and read it for you, but
9 I think it might be easier for me to read here, and let's
10 see if I can bear down. On the left, we have a series of
11 date ranges; is that correct?

12 A. Yes, that's correct.

13 Q. The first being March to December of 2003 and then in
14 annual ranges after that; is that correct?

15 A. That's correct.

16 MR. BIANCHI: Your Honor, can we have a sidebar on
17 an issue here?

18 THE COURT: Sure. It's been a short period of
19 time, I guess, haven't seen you guys.

20 (At sidebar, Court and counsel present)

21 MR. BIANCHI: With respect to Document 112, I
22 just -- the question there is it's measuring price
23 differential between the offer that Marco Island put out and
24 that Comcast put on. There's been a whole issue back and
25 forth. I just want to make -- let me rephrase that

1 Predatory pricing is out of this case, and I just don't want
2 counsel in his questions to imply in his questions that
3 we're trying to drive them out of business. Basically what
4 the document says is we're competing on price.

5 MR. BALLER: I have no intention on arguing
6 they're engaging in predatory pricing here.

7 MR. BIANCHI: Or that we're trying to drive them
8 down out of business on price.

9 MR. BALLER: No, that's not my point.

10 MR. BIANCHI: I would object to the issue coming
11 in. I'm sorry, Mr. Baller, I just want to object to it
12 coming in for the purposes that we're trying to, quote,
13 drive them out of business on price. That's not part of the
14 case. We've been hearing about wires, exclusive wire
15 agreements for the better part of a week.

16 THE COURT: The exhibit's been admitted by lack of
17 objection. If you have an objection with regard to a
18 specific question with regard to the exhibit, feel free to
19 raise it.

20 MR. BIANCHI: Thank you, Your Honor.

21 (Sidebar concluded)

22 BY MR. BALLER

23 Q. Moving to the middle of this chart, there is a column
24 of MIC proposed rate. You see that?

25 A. Yes.

1 Q. And Comcast proposed rates; see that?

2 A. Yes.

3 Q. And a column that calculates Comcast's annual

4 increases; is that correct?

5 A. Yes.

6 Q. Okay. And then per unit difference, total monthly

7 difference, and annual difference; is that correct? You see

8 that on the right?

9 A. Yes, I think that that's correct.

10 Q. And the difference of \$13,240.32 difference over the

11 life of the contract?

12 A. Okay.

13 Q. Is that correct?

14 A. That's what it states here.

15 Q. And so what do the next two lines mean?

16 A. Excuse me, Mr. Baller, can you tell me again what the

17 number is? It would help me if I could see the whole

18 document to explain what that number means.

19 Q. Let me give it to you and then I'll put it back up on

20 the board for the jury.

21 A. Okay. Thank you.

22 Q. Okay. So what this world needs is bigger charts.

23 I'm having a very difficult time.

24 Am I correct in understanding the \$13,240.32 on

25 the right to be the aggregate amount that Marco Island

1 Cable's proposal would be lower than Comcast's proposal over
2 the period of this contract?

3 A. I believe that based on what was being considered at
4 the time, that that would be the case.

5 Q. Okay.

6 A. It looks like this was something that was just being
7 discussed. I don't know where it ended up, but that's --
8 that's what it looks like it's doing. It looks like it's
9 comparing, and then the difference.

10 Q. Okay. And so if we go over to the left here,
11 break-even signing bonus, what does that term mean?

12 A. I believe that what this did was took that amount and
13 divided it by the number of units in the community, so it
14 came out to \$103.44 per unit would have been a break-even
15 signing bonus for consideration.

16 Q. Does -- does Comcast sometimes use different
17 terminology in describing signing bonuses?

18 A. Signing bonus would be one term. When these
19 contracts are negotiated, sometimes there are other types of
20 incentives that might be built into the contract. For
21 example, sometimes we'll provide an in-house community
22 channel for the condominium, and that would be a type of a
23 signing bonus. In some cases, it might actually be a fee
24 that's paid out on a per unit basis, and then the
25 association can use it to buy a TV for their clubhouse or --

1 so yes, I would say that it has multiple meanings.

2 Q. Okay. Is a signing bonus different from a door fee?

3 A. I would, in some cases, consider it to be different.

4 I would think that that term is used more frequently with

5 new developments.

6 Q. Would you -- would you tell us what you mean by door

7 fee?

8 A. Yes. With some new developments, the developer will

9 receive a door fee or a per unit amount pursuant to the

10 agreement.

11 Q. And what is the door fee for?

12 A. In some cases, it's an exchange for exclusivity, for

13 being on the premises. The developer can utilize that

14 towards infrastructure, towards, you know, setting up --

15 I've seen it used for setting up high-tech equipment in the

16 common areas, for providing services to the residence of

17 that community.

18 Q. And what else could the developer use it for?

19 A. I suppose they could use it for whatever they deemed

20 necessary for their development.

21 Q. Or just put it in their pocket?

22 A. I suppose they could probably do that, if they wanted

23 to.

24 Q. And you pay door fees on a regular basis?

25 A. I would say that that's a --

1 MR. BIANCHI: Objection, Your Honor, relevance.

2 THE COURT: Overruled.

3 A. I would say that it's not uncommon to pay door fees.

4 We don't pay door fees on a regular basis, but there

5 definitely have been contracts where we have paid door fees.

6 Q. On Marco Island?

7 A. I don't recall if we've -- if we've been in the

8 situation. Marco Island, right now, is pretty far

9 built-out. I know we did not at -- or I feel confident that

10 we did not with WCI at the Belize and Vera Cruz properties.

11 So I can't answer that question. I don't know if we have on

12 Marco, specifically.

13 Q. So we have door fees and we have signing bonuses.

14 Are there any other -- and you also talked about giving

15 communication systems; is that correct? Condominium

16 communication systems?

17 A. As an example, I used community channels.

18 Q. Oh, community, that was the word I was searching for.

19 A. Yeah.

20 Q. Are there any other kinds of incentives that you

21 give? Now, I'm not talking about Ms. Mello giving Comcast

22 cups --

23 A. Mugs.

24 Q. Mugs, excuse me.

25 A. Well, that would be -- that would be one. You know,

2 developer may have that are built into an agreement, it's
3 certainly possible. A month free of service, that type of
4 thing is -- is standard. That's what I can think of right
5 now.

6 Q. Okay. Let's look at Document Number 63, Plaintiff's
7 Exhibit 63.

8 You know what? I am going to thank you for your
9 testimony today, and turn you to Mr. Bianchi for cross.
10 Thank you very much. I appreciate your testimony.

11 THE COURT: Mr. Bianchi?

12 MR. BIANCHI: Your Honor, may we take a break
13 or -- before we start?

14 THE COURT: It's 4:25, if we take a break, it
15 would be almost over.

16 MR. BIANCHI: I'm sorry, Your Honor, is it -- it's
17 late in the day. Is it possible -- the witness has been on
18 the stand basically all day. Is it possible to end our day
19 today at this time?

20 THE COURT: Come up.

21 (At sidebar, Court and counsel present)

22 MR. BALLER: Go ahead

23 THE COURT: I want to ask you, it's my sense that
24 we're not making quick progress. Is that accurate or not?

25 MR. BALLER: This was an important witness for us

1 and we had a great deal of ground to cover with her. Our

16 County in the years 2001 through 2005, but has paid -- but
17 has paid personal property taxes on its distribution wires
18 during that period in Collier County? Were you involved in
19 the preparation of that tax stipulation?

20 A. No, not in any way.

21 Q I am going to put up on the board a copy of this
22 stipulation. Have you seen this stipulation?

23 A. Yes. I believe it was brought up on the screen at
24 some point during the process here.

25 Q Okay, so you say that you were not involved in the

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1 development of this stipulation in any way?

2 A. No, sir, I was not.

3 Q. When was the first time that you saw this?

4 A. I may have seen it in some preparation, but I can
5 assure you that I was not involved in the preparation of it
6 or the compiling of it, and I believe the first time I saw
7 it was actually here in this courtroom.

8 Q. So, I'm sorry, you're saying you were not involved in
9 the development of the concept or development of information
10 supporting this stipulation; is that what your testimony is?

11 A. Yes, that is my testimony.

12 Q. Okay. And then you didn't see the final form of the
13 stipulation until the -- until you saw it in this courtroom?

14 A. That's -- yes, that's correct.

15 Q. Okay. Okay, yesterday, you testified about the

16 payback analysis for the Belize and I believe the payback
17 analysis was Plaintiff's Exhibit 112, and we also reviewed
18 portions of Plaintiff's Exhibit 8. I'm just going to ask
19 you a few questions about that. I don't think that we need
20 to spend the time to go back to the details. But if you do,
21 if you would like to go back to the details, by all means,
22 just stop my questions and say you'd like to check your
23 sources; okay?
24 A. Okay, thank you.
25 Q. Okay. Now, you said that at the time that the

1135

1 payback analysis was done, this was 2002, and I believe that
2 we -- we looked at the very difficult to read shading over
3 2002. But this was 2002; is that correct?
4 A. That's based on the date that was at the top of it,
5 yes.
6 Q. Okay. And the analysis, if I recall, assumed
7 profitability in year one of about \$14,000?
8 A. As I recall, that's correct.
9 Q. And that was based on a -- an assumed take rate of
10 about 75 percent of the number of units in the property; is
11 that correct?
12 A. As I recall, yes.
13 Q. Okay, and you pointed out that Comcast did not
14 actually achieve that take rate; is that correct? And
15 that -- sorry, I'll stop.
16 A. Yes, that's correct.

17 Q And that, in fact, you're not likely to achieve
18 profitability on that property for three or four years?
19 A That was my estimate, yes.
20 Q Okay Now, you testified the day earlier that at the
21 time that you negotiated the Belize contract, you were not
22 aware that there were dual systems capable of supporting the
23 operations of independent cable systems at the time Do you
24 recall that?
25 A Yes, I do.

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1 Q So is it fair to say that when you did this payback
2 analysis, your assumption was that you would not have
3 competition in the Belize?
4 A I would say that it was fair to say that we thought
5 that we would be the provider of choice in the property and
6 yes, that we would be servicing the residents there,
7 correct.
8 Q And that there would not be -- because of -- for
9 whatever reason, there would not be someone else using your
10 wiring in that building? You assumed a single set of wiring
11 that someone else would not be able to get access to?
12 A That is correct.
13 Q And in fact, you negotiated a 20 year exclusive right
14 to use wiring to ensure that no one would have access to
15 your wiring for that period of time?
16 A We negotiated a 20 year non-exclusive agreement.

17 Anybody else could come in the property. Comcast would have
18 the use, exclusively, in order to deliver our services over
19 the owner wiring. They were giving us use of that, yes,
20 during the term, the full term.
21 Q. Correct. Now, so there was a non-exclusive use --
22 there was a non-exclusive right to serve the property for 20
23 years, and a 20 year exclusive right to use the inside
24 wiring, as far as you knew?
25 A. Yes.

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1 Q. At the time you negotiated that?
2 A. Yes, that's correct.
3 Q. Okay. Now, do the protections for operators and MDU
4 owners and unit owners of the federal home wiring rules
5 apply in the case of an exclusive right to use, as
6 distinguished from a case in which the cable operator
7 actually owns the wiring.
8 A. Again, my understanding of this is that when the
9 ownership of the wiring is specified in an agreement and the
10 parties have reached an agreement as to who owns it, who can
11 use it, and what happens at the end of the term, then the
12 wiring rules would not apply
13 Q. Okay. So the answer is yes; is that correct? The
14 rules don't apply where there is an -- a non-exclusive right
15 to provide service, but the cable operator has tied up the
16 wiring in a -- an exclusive right to use, that does not
17 amount to ownership?

18 A Unless there is some legal understanding that I may
19 be not aware of, which is entirely possible, the rules are
20 pretty comprehensive, but ...
21 Q Okay, and so you assumed that with this 20 year
22 exclusive right to use the cable wiring, which you assumed
23 applied to a single set of wiring rather than dual wiring,
24 you would be safe from competition from Marco Island Cable
25 unless it built a secondary wiring system, as we've defined

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1 it before, at the Belize and also the Vera Cruz?
2 A We felt safe from competition there because we know
3 Marco Island Cable -- we felt safe because we knew we would
4 have use of that wiring during the term. So to answer your
5 question, did we assume we'd never have competition there?
6 No, I don't think that we would make that -- that
7 determination
8 Q Well, how did you assume that Marco Island Cable
9 would be able to provide service and competition with you if
10 you had the exclusive right to control all of the wiring,
11 which you assumed, as it turns out incorrectly, that you
12 had?
13 A Because those properties were new construction at the
14 time. The buildings were still being built. So there was a
15 hundred percent opportunity for Marco Island to go in and
16 either negotiate the same with WCI, who's a large developer,
17 or to put in their own or to coordinate that on their own

18 So I --

19 Q. Well then, how do you explain writing "sounds like a
20 plan" when Mr. Kovacheff sent you an email saying this --
21 with this clause, "we'll be safe from Marco Island Cable"?
22 You wouldn't have been safe; would it? Would you explain
23 that?

24 MR. BIANCHI: Objection, Your Honor. We're
25 plowing old territory from last Friday.

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1 THE COURT: Overruled for the time being.

2 A Again, as I stated, Marco Island has had a history of
3 utilizing company-owned wiring, wiring that we've invested
4 in. With the Belize and Vera Cruz, those contracts, we were
5 happy to have those contracts, happy to have the use of the
6 owner wiring, and not make that investment and have Marco
7 Island Cable come in and utilize our wiring again. It had
8 happened so many times over so many period of years that we
9 were happy to have exclusive use of the wiring in those two
10 properties. It sounded like a great plan to have that use.
11 Those were new built and we -- and they're right on Cape
12 Marco So there's a series of properties right there. I
13 don't think we ever questioned whether or not Marco Island
14 would be there. We just knew that we had use of that wiring
15 and we were happy about that.

16 BY MR. BALLER

17 Q. So are you testifying that you did not assume that
18 the way that Marco Island Cable would compete with you would

19 be to install a secondary system of wiring at the Belize?
20 A. I assumed that he would install a system. It was
21 pre-wire. It would have been something that he could have
22 done. It wasn't a post-wire situation. I know you've
23 mentioned several times having to go up the outside of
24 Belize and how gorgeous Belize is, which it is, but these
25 buildings were new construction, so there was a full window

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1 of opportunity to pre-wire those buildings.
2 Q. Okay. Let's move on to another area. A couple days
3 ago when I was examining you about the Charter Club, you
4 testified that you had seen a trouble call report for the
5 Charter Club showing that work had been done on the wiring
6 in the Charter Club. Do you remember that?
7 A. I remember testifying that I ran a report and I
8 remember saying that I believe Charter Club was amongst
9 several properties that were in that report, yes.
10 Q. Okay. And then yesterday, at the beginning of the
11 day, your counsel handed us this stack of paper and we did
12 not have time to read it, but I would like to now -- we've
13 had a chance to look at it -- ask you a few questions about
14 it. Could you please put in front of you, I believe this is
15 what, 570, Defendant's 570?
16 MR. BRUMFIELD: I believe that's right. Yes, it's
17 570.
18 BY MR. BALLER

1 (The Witness is Sworn)

2 DEPUTY CLERK: Thank you. You may have a seat.

3 If you would, please state your full name, spelling your
4 full name.

5 THE WITNESS: Chrisann, C-H-R-I-S-A-N-N, Orlando,
6 O-R-L-A-N-D-O, Folk, F-as-in-frank-O-L-K.

7 CHRISANN O FOLK,

8 a witness herein, after having been duly sworn,

9 was examined and testified under oath as follows:

10 DIRECT EXAMINATION

11 BY MR. BALLER

12 Q Ms. Folk, thank you very much for appearing here
13 today. Are you appearing pursuant to a subpoena issued to
14 you by Marco Island Cable?

15 A. Yes, sir.

16 Q Would you please tell us what your current employment
17 is?

18 A. I currently work for Smart Street, which is a
19 division of Flag Bank out of Atlanta, Georgia

20 Q And how long have you been in that position?

21 A. Since February 1st of 2005.

22 Q And before then, what were you doing?

23 A. I was employed with Time Warner Cable in the Naples
24 Fort Myers system.

25 Q And what years were you employed by Time Warner

1 Cable?

2 A. May of 2003 through January of 2005.

3 Q. When did you first begin to work -- when did you

4 first begin to work in the cable industry?

5 A. March, March of -- March of 1990.

6 Q. March of 1990, and would you give us your employment

7 history, if you would, please, in the cable industry,

8 beginning in March of 1990?

9 A. In March of 1990, I started working for Palmer

10 Cablevision as an administrative assistant to the commercial

11 development manager. And in 1992, I became an account

12 executive for Palmer Cablevision and was with that system

13 through the multiple mergers up unto the Comcast merger, and

14 then up until the time in 2003 when I resigned.

15 Q. So you were -- you were working for the incumbent

16 cable operator, Palmer, through the chain of predecessors

17 that is currently Comcast; is that correct?

18 A. That's correct.

19 Q. Okay. And did your responsibilities include Marco

20 Island?

21 A. Yes, sir.

22 Q. Did they also include areas in Collier County outside

23 of Marco Island?

24 A. Yes, sir.

25 Q. Okay. Could you describe briefly what your -- what

1 kinds of things that you did in your position at Palmer,
2 Colony, et cetera, beginning about 1993?

3 A. In 1993, I was an account executive for the system
4 and we approached developers and associations with either a
5 bulk agreement or an easement agreement. I did that up
6 until 1999, when I became commercial development manager for
7 the system, and I held the manager's position until I
8 resigned in 2003.

9 Q. So in the period 1993 through 1999, you actually
10 negotiated contracts with MDUs on a regular basis; is that
11 correct?

12 A. Yes, sir.

13 Q. Did you do dozens of such negotiations? Is that too
14 high a number?

15 A. Oh, hundreds.

16 Q. Hundreds, okay. And you were present in 1993 when
17 Marco Island Cable first went into business in this area; is
18 that correct?

19 A. Yes, sir.

20 Q. And you were present when Marco Island Cable began to
21 grow in number of -- in number of MDUs that it served
22 throughout the time that you were with the predecessors of
23 Comcast; is that correct?

24 MR. BIANCHI: Objection, Your Honor, relevance.

25 A. Yes.

1 THE COURT: Overruled

2 BY MR. BALLER

3 Q. Did you observe any impact on the competitive
4 environment from Marco Island Cable's entry into the market?

5 MR. BIANCHI: Objection, Your Honor, relevance as
6 well as the time frame.

7 MR. BALLER: I think this is extremely relevant to
8 everything that we're going to be talking about. It is
9 foundational. Please, Ms. -- the way we do this is that if
10 Mr. Bianchi objects and you're in the middle of an answer,
11 please pause and then the Court will rule. Okay?

12 THE COURT: The objection's sustained.

13 BY MR. BALLER

14 Q. Did the entry of Marco Island Cable have an impact on
15 the way that you negotiated contracts for MDUs?

16 MR. BIANCHI: Objection, Your Honor, relevancy.

17 THE COURT: Sustained.

18 BY MR. BALLER

19 Q. Ms. Folk, we have heard testimony that Marco Island
20 Cable's period of greatest growth occurred between the years
21 1997 through 2001

22 MR. BIANCHI: Objection, Your Honor, relevancy.

23 THE COURT: 2001 is relevant.

24 MR. BIANCHI: The question is '97 through 2001.

25 THE COURT: I don't know what the question is. I

1 haven't heard the whole thing yet. Go ahead

2 BY MR. BALLER

3 Q. During that -- during that period of time, was Media

4 One the incumbent cable provider?

5 MR. BIANCHI: Objection, Your Honor, relevancy.

6 THE COURT: Overruled.

7 BY MR. BALLER

8 Q. Please go ahead.

9 A. I'm not sure exactly what years Media One was

10 actually in place. I can tell you they were there at 2001.

11 I'm not sure what year they started, though.

12 Q. Okay, and you were -- you were an account executive

13 with Media One as well; is that correct?

14 A. In 2001, I was actually the manager of the department

15 at that time.

16 Q. Okay. Did Media One have a policy with respect to

17 enforcement of restrictions on inside wiring in MDUs that

18 were subject to competition with Marco Island Cable?

19 MR. BIANCHI: Objection, Your Honor, relevancy as

20 well as time frame.

21 THE COURT: Overruled.

22 A. I'm not really sure what you're asking

23 BY MR. BALLER

24 Q. Did -- did Media One seek to enforce restrictions on

25 access to inside wiring in the period -- in the period --

1 during the period of time in which it was the licensed or

2 the franchised incumbent in this area?

3 A. No, sir.

4 Q. And Media One did, in fact, inherit contracts that

5 contained restrictive language; is that correct?

6 A. Yes, sir.

7 Q. Do you know why Media One did not enforce such

8 restrictive provisions?

9 MR. BIANCHI: Objection, Your Honor, foundation.

10 THE COURT: Overruled. She can answer yes or no,

11 and then take it from there.

12 A. No, sir.

13 BY MR. BALLER

14 Q. But you do know that Media One did not enforce

15 restrictive language in their agreements?

16 A. Yes, sir.

17 Q. Was it difficult for you to compete with Marco Island

18 Cable during that period, meaning Media One?

19 A. Yes, sir.

20 Q. Why was it difficult?

21 A. It was difficult for the cable company because the

22 rates were not comparable at the time.

23 Q. Please let me -- go ahead and finish and then I'll go

24 back. Go ahead.

25 A. That's pretty much it. It was based on a financial

1 decision for associations.

2 Q Do you mean that Marco Island Cable's rates were
3 lower?

4 A Yes, sir.

5 Q And what about comparability of services and channel
6 selection, how did those compare?

7 A The offerings were somewhat comparable. There wasn't
8 enough differences there to make it make financial sense for
9 the associations to pay the higher rates.

10 Q And so it was -- okay, thank you During the time
11 that you were employed by Comcast's predecessors and by
12 Comcast, itself, were you part of an organization whose
13 acronym is CAMMI?

14 A Yes, sir

15 Q What is CAMMI?

16 A Community Association Managers of Marco Island.

17 Q And what was the nature of that organization?

18 A The organization was formed to allow the managers a
19 avenue to get together and share information so everybody on
20 the island would have the benefit of each other's knowledge

21 Q Are you able to hear? Okay, I was just wondering.

22 You're speaking softly and -- okay

23 And did Comcast and its predecessors encourage you
24 to be a participant in CAMMI?

25 A Yes, sir.

1 Q. And did the members of CAMMI discuss proposals that
2 they would receive from time to time from Marco Island Cable
3 or the Comcast predecessor or Comcast?

4 A. Yes, sir.

5 Q. And this was a way for property managers to keep in
6 touch with latest developments out in the market; is that
7 correct?

8 A. Yes, sir.

9 Q. And -- all right. Now, in 2001 Comcast acquired the
10 cable franchise for the Marco Island area; do you recall
11 that?

12 A. Yes, sir.

13 Q. And I need to ask a couple questions more about the
14 period of dealing with the predecessors and with Comcast,
15 itself. Before Comcast became the franchised cable operator
16 in this area, did you consider it important to win as many
17 basic subscribers in an MDU as possible?

18 A. Yes, sir.

19 Q. And why did you think it important to win as many
20 basic subscribers as possible?

21 A. The basic subscribers that are active on the system
22 is -- is the value of the system. So the more you have, the
23 valuable -- more valuable the system is.

24 Q. And would you explain why it is important to -- why
25 you felt it important to --

1 MR. BIANCHI: Objection, Your Honor, relevancy,
2 and there is no -- there's no foundation that this witness
3 is qualified to answer these questions.
4 THE COURT: The objection's overruled.
5 BY MR. BALLER
6 Q Please go ahead. Thank you.
7 A I'm sorry, can you say the question one more time?
8 Q If you have access to a basic subscriber, what
9 benefit does that give to a cable operator?
10 A If you have an active subscriber on your system and
11 you go to sell your system, that -- that's how they
12 determine the value of your system, is based on the number
13 of active subscribers.
14 Q Is having a basic subscriber a vehicle or a gateway
15 to selling other services, as well as basic services?
16 A Yes, sir.
17 Q And is it -- if a competitor did not have access to a
18 basic subscriber, would it be difficult for that competitor
19 to compete at an MDU?
20 MR. BIANCHI: Objection, Your Honor, no predicate.
21 THE COURT: Overruled.
22 A Yes, it would be
23 BY MR. BALLER
24 Q Would you explain why, please?
25 A Well, there's only one wiring going to that unit, one

1 piece of wire, and not multiple providers can hook to one
2 wire. So you would kind of have to make a choice which
3 provider you wanted on that wire.

4 Q. You're saying that if a basic subscriber selected one
5 provider, then that would -- that would make it difficult
6 for another provider to offer service to that subscriber?
7 Is that what you're saying?

8 A. Correct, yes.

9 Q. Did -- did Comcast's predecessors, or did you believe
10 that providing alternative wiring was a feasible --

11 MR. BIANCHI: Objection, Your Honor.

12 MR. BALLER: -- activity?

13 MR. BIANCHI: Objection, there's no foundation
14 that this witness is qualified to testify as to what Comcast
15 thought, whether it was feasible or not to do a post-wiring
16 or secondary wiring.

17 THE COURT: Sustained.

18 BY MR. BALLER

19 Q. Did you, yourself, have an understanding of the
20 ability of competitors to serve a customer where that
21 customer was taking service from another provider over a
22 single set of wiring?

23 A. I, myself, understood the process, yes.

24 Q. And what was your understanding?

25 A. That when a building is built, there's one system

1 that is installed, and at that time, the current provider or
2 the chosen provider would install their system, activate the
3 service, and provide service to the residents as they moved
4 in. And once that happens, the second provider has no
5 ability to provide service to that building because there's
6 not a second system that's in place for them to do so.

7 Q. And in your day-to-day activities, did you come to
8 know many MDUs, know their physical structure?

9 A. Yes, sir.

10 Q. And did you believe that it was possible to install a
11 second system in the properties that you were familiar with?

12 MR. BIANCHI: Objection, Your Honor, no foundation
13 for this witness to answer that question.

14 THE COURT: Sustained

15 BY MR. BALLER

16 Q. Did you frequently visit buildings in Marco Island
17 during the time that you were a commercial representative
18 and commercial development manager?

19 A. I'm not sure what you mean by frequently, but yes, I
20 visited buildings as we were negotiating with them or had
21 issues or needed to visit them, yes.

22 Q. Would you say that the majority of the buildings that
23 you visited were new buildings or old buildings?

24 A. Majority of old

25 MR. BIANCHI: Objection, Your Honor. There's no

1 qualification as to what new or old is here.

2 BY MR. BALLER

3 Q. Okay, let me define what I mean by old. Old meaning

4 approximately 15 to 20 years old or older.

5 A. The majority of the buildings on Marco are older,

6 that would fit that criteria.

7 Q. Okay, and did you or -- did you have discussions with

8 others in Media One about the ease of rewiring or installing

9 secondary --

10 MR. BIANCHI: Objection, hearsay and relevancy

11 THE COURT: The hearsay is sustained.

12 (Discussion off record)

13 BY MR. BALLER

14 Q. Okay. Let's move to 2001 when Comcast came into the

15 market and assumed responsibility for the AT&T franchise.

16 Did you continue in your same position when that occurred?

17 A. Yes, sir.

18 Q. And would you describe the differences in the

19 organization of the management that occurred when Comcast

20 took over?

21 A. I think the structure was pretty much the same. The

22 reporting structure changed, though. Under Media One, I

23 reported to the director of Media One, who was located in

24 Jacksonville, Florida. When Comcast came in, my position,

25 or my reporting authority changed and I reported directly to

1 the general manager of the system.

2 Q. And who was that?

3 A. That was Barbara Hagen.

4 Q. And did she come in from another office of Comcast

5 somewhere into the offices that you occupied?

6 A. Yes, sir. She transferred from the Sarasota,

7 Florida, office.

8 Q. Did you -- okay. I'm sorry, did you complete your

9 answer?

10 A. Yes, sir.

11 Q. Did you also report to anyone else?

12 A. I had a dotted line to the director, who was Terese

13 Delgado.

14 Q. And what do you mean by dotted line?

15 A. My understanding of it was that Barb Hagen was my

16 immediate boss and I reported directly to her. But for

17 assistance, Terese was more specialized in commercial

18 development. So if we had any issues that needed to go for

19 comment, direction, if we needed feedback, anything like

20 that, we would ask Terese for those assistance

21 Q. Okay, and did Barbara Hagen, Terese Delgado, and you

22 discuss the trend of Marco Island Cable's growth during the

23 years before Comcast assumed responsibility for the

24 franchise?

25 MR. BIANCHI: Objection, Your Honor, hearsay, and

2 THE COURT: Overruled.

3 A. Yes, sir.

4 BY MR. BALLER

5 Q. And what did you discuss about that?

6 A. We looked at properties we had lost to Marco Island

7 Cable, that had left Comcast and went with Marco Island

8 Cable, properties that we had renewed and retained.

9 Q. Did you conduct formal or informal surveys of what
10 the customers believed about Marco Island Cable at the time?

11 A. I'm not really sure what you mean by surveys.

12 Q. Did you or others in the office, perhaps Nikki Mello,
13 call associations or take any other steps to find out what
14 their perceptions were of Marco Island Cable?

15 A. Yes, sir.

16 Q. And what were those perceptions? What did you learn?

17 MR. BIANCHI: Objection, Your Honor, hearsay.

18 THE COURT: Sustained.

19 BY MR. BALLER

20 Q. All right, let's go back to what you and Ms. Hagen
21 and Ms. Delgado discussed about the competitive situation in
22 the Naples -- or on Marco Island Cable. Did Ms. Hagen or
23 Ms. Delgado and you arrive at any new strategies for dealing
24 with Marco Island Cable?

25 A. Yes, sir.

1 Q. And what were those strategies?

2 A. In specifics or just overview?

3 Q Let's be more specific. That's a good idea. Did you
4 discuss the possibility of offering more channels or better
5 service?

6 A. No, sir, because the system was provided -- the
7 system that was provided to Marco Island Cable was the
8 system that was provided to any other property that was off
9 of that same head end which was transmitting that
10 information.

11 Q Well, let me ask the question this way, was it your
12 perception that Marco Island Cable was offering services
13 that were similar in quality and choice but just lower
14 price?

15 A Yes, sir.

16 Q And was it your perception that Marco Island Cable
17 was popular on the mainland because it was a small, local
18 cable --

19 MR. BIANCHI: Objection, Your Honor, that question
20 has an unclear precedent on it. Marco Island Cable was
21 not on the mainland

22 MR. BALLER: Did I say -- I'm sorry, I didn't mean
23 to say mainland. I do that all the time. That was
24 unintentional. I meant Marco Island. If I say mainland,
25 unless I really mean it, I mean Marco Island.

1 MR. BIANCHI: How will we know?

2 MR. BALLER: How would you know?

3 THE COURT: Go ahead, ask your question. Come on.

4 BY MR. BALLER

5 Q Go ahead, please.

6 A It was my perception that Marco Island Cable was well
7 liked on the island, had a good reputation and the customers
8 I spoke with had no problem with the services.

9 Q So how did you decide that you would stop the growth
10 of -- strike that.

11 How did you decide to compete with Marco Island
12 Cable? What was your -- did a strategy evolve out of those
13 discussions?

14 A We had a strategy that was trying to limit -- trying
15 to trap out some channels that we felt was not provided --
16 we felt were superior channels that were not provided by
17 Marco Island Cable which would allow the reduction of the
18 per unit rate

19 Q Did you also discuss a change in the wiring practices
20 from the practices that Media One had had previously?

21 MR. BIANCHI: Objection, Your Honor, hearsay.

22 THE COURT: Absent a foundation as to who "we" is,
23 the objection is sustained

24 BY MR. BALLER

25 Q Yes, okay. I'm talking about the management of the

1 Naples system, your superior, Barbara Hagen, Terese Delgado,
2 if she was involved, and yourself. Did you have discussions

3 about changing the wiring policy that Media One had followed
4 during the years before Comcast came into the market?

5 MR. BIANCHI: Objection, Your Honor, hearsay.

6 THE COURT: Overruled.

7 A. When Comcast came in, I was told that it's the
8 Comcast way to retain ownership of internal wiring, whereas
9 Media One did not have that policy in place.

10 BY MR. BALLER

11 Q. And did that result in changes in the way that you or
12 others in the office under your supervision negotiated
13 contracts?

14 A. Yes, sir.

15 Q. And how did that change?

16 A. Well, when we were negotiating contracts, we made it
17 clear to the person on the other end that the internal
18 wiring was owned by the cable company as opposed to the
19 association.

20 Q. And was the ownership that you claimed based on the
21 same contracts that had been previously the subject of --
22 strike that.

23 In some cases, did the ownership that you claimed
24 relate to the agreements, the same agreements that were
25 involved in negotiations when you were with Media One but

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1 were not subject to claims of restrictive enforcement?

2 MR. BIANCHI: Objection, Your Honor.

3 BY MR. BALLER

4 Q. Let me put it this way -- you're right, I'm not doing
5 as well as I'd like.

6 Did the ownership relate back, the ownership that
7 you're talking about, relate back to agreements that may
8 have been negotiated in the early '90s or even earlier, by
9 the predecessor cable company? Were those the contracts
10 that you looked to for ownership of the wiring?

11 A. Yes, sir.

12 Q. Okay. And were some of those -- were any of those
13 contracts also the subject of negotiations during the window
14 of time when Media One was the cable franchise operator?
15 Did it come up for renewal in that period and then come up
16 for renewal again during the Comcast period?

17 MR. BIANCHI: Objection, Your Honor, relevancy.
18 And additionally, I'm not quite sure if the question makes
19 sense.

20 THE COURT: The first part is overruled. The
21 second part, if she understands the question, she may answer
22 it.

23 A. Can you repeat the second part that I should answer?

24 BY MR. BALLER

25 Q. Okay, okay. Let's say -- I'll illustrate it by an

1 example. Let's say Palmer negotiated a contract, an
2 agreement, and that agreement came up for renewal during the
3 period of time that Media One was the franchise holder,

4 okay? And if that contract had restrictive ownership
5 language, you've testified before that Media One did not
6 seek to enforce the restrictive ownership of wiring; is that
7 correct?

8 A. Yes, sir.

9 Q. If that same contract came up again during the
10 Comcast period, would Comcast's policy have been different
11 in interpreting that same contract?

12 A. Yes, sir.

13 Q. In what way?

14 A. In Media One, if the contract expired and the
15 association decided to choose another cable provider, the
16 internal wiring that was at the demarcation point external
17 of the building into the building would then be relinquished
18 by the cable company and the new cable company would
19 actually be able to -- that would be the terminating point
20 where they could actually install cable at that point on.

21 With Comcast, we took the position that that
22 internal wiring was not the association's and that the
23 cable -- an alternate cable provider would not be able to
24 put their cable -- connect it at that termination point

25 Q. Did Media One base its operating procedures on any

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1 litigation that may have occurred during the period of
2 Comcast's predecessors?

3 MR. BIANCHI: Objection, Your Honor, relevancy.

4 MR. BALLER: Just trying to establish the basis

5 for Comcast -- for Media One's policies.

6 THE COURT: The objection's sustained.

7 MR. BALLER: All right.

8 BY MR. BALLER

9 Q. Okay, so let me go back now to the Comcast period.

10 Did Ms. Hagen or Ms. Delgado instruct you that you were now

11 to read contracts on ownership restrictively? Were those

12 your instructions?

13 MR. BIANCHI: Objection, Your Honor. This is

14 hearsay.

15 THE COURT: That's overruled.

16 A. Yes. If a contract was expiring, we needed to know

17 the language in the contract so we knew what position to

18 take in the renewal process.

19 BY MR. BALLER

20 Q. Okay. When Comcast came on the scene in 2001, and

21 encountered a competitor who, in the previous years, had

22 been increasing business substantially, did you and

23 Ms. Hagen and Ms. Delgado discuss the desirability or need

24 to send a message to the condominium or MDU market about

25 Comcast's new practices?

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1 MR. BIANCHI: Objection, Your Honor, relevancy as

2 well as foundation.

3 THE COURT: Overruled.

4 BY MR. BALLER

5 Q. Please answer

6 A. Comcast felt very strongly about the ownership of the
7 internal wiring and when associations communicated with us
8 that there was a possibility of them taking on an
9 alternative provider, yes, Comcast, in their correspondence
10 to the associations, let them know that that internal wiring
11 was the ownership of Comcast and they were not going to
12 relinquish that ownership.

13 Q. Okay. And did Comcast intend to ensure that everyone
14 understood what its --

15 MR. BIANCHI: Objection, Your Honor, leading.

16 THE COURT: Let him finish the question.

17 BY MR. BALLER

18 Q. I'll start again, because "everyone" is too broad.
19 Did Comcast intend that its new policies be well understood
20 by the MDU management and ownership community on Marco
21 Island?

22 MR. BIANCHI: Objection, Your Honor, leading.

23 THE COURT: Overruled.

24 A. Yes, sir

25

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1 BY MR. BALLER

2 Q. Did Comcast intend to use CAMMI and other
3 organizations to send this message?

4 MR. BIANCHI: Objection, Your Honor, no foundation
5 to this, as well as leading

6 THE COURT: Overruled.

7 A. I don't -- I don't know that I can say that they used

8 CAMMI for that. We, as employees, were very involved in

9 CAMMI and our communications with the CAMMI members would

10 be -- would be to that effect.

11 MR. BIANCHI: Your Honor, this is -- the witness

12 answered the question. So it's hearsay, but --

13 THE COURT: All right. Too late, then.

14 MR. BIANCHI: I hear you.

15 THE COURT: All right, go ahead.

16 BY MR. BALLER

17 Q Are you familiar with a property called Charter

18 Club -- Charter Club, yes.

19 A. Yes, sir.

20 Q And do you recall whether Comcast, at one point,

21 decided to remove its home run wiring from Charter Club?

22 A. Yes, sir.

23 Q Is that a decision that you were involved in making

24 or is that a decision that Ms. Hagen or Ms. Delgado made?

25 MR. BIANCHI: Leading, Your Honor.

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1 THE COURT: Overruled.

2 A. I was involved in the discussions. I was a part of

3 the discussions, but I was not the decision maker at that

4 time.

5 BY MR. BALLER

6 Q. Who was the decision maker?

7 A. Barbara Hagen and Terese Delgado.

8 Q. Okay. Do you recall what the -- what the basis of
9 the decision to remove the wiring was?

10 A. The Charter Club's bulk contract had expired and the
11 Charter Club had notified us that they -- or notified
12 Comcast that they were going to take on an alternative
13 provider.

14 Q. And do you recall whether Comcast decided to remove
15 both the home run wiring and the home wiring from that
16 property? Or was it one or the other of them?

17 A. It's -- it was both. It was the home run wiring and
18 the home wiring, as well.

19 Q. Okay.

20 MR. BIANCHI: Mr. Baller, what exhibit number?

21 MR. BALLER: Yeah, I'll give it to you in a
22 second. I'm going to show you in just a second Plaintiff's
23 Exhibit 34.

24 THE WITNESS: It's right here.

25 MR. BALLER: You could read it there or you could

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1 look in the Plaintiff's book at your feet. If you look at
2 the Plaintiff's book at your feet, then you don't have to
3 wait for me to shuffle the document. It's in Volume 1 and
4 it's Document Number 34.

5 THE WITNESS: Okay.

6 BY MR. BALLER

7 Q Do you want to briefly read the letter to yourself so
8 that it will be fresh in your mind?
9 A Yes, sir.
10 Q Do you recall that document?
11 A Yes, sir, I do
12 Q Okay. Now, does that refresh your recollection as to
13 whether Comcast intended to remove both its home run and its
14 home wiring, at least at the time it wrote this letter?
15 A Yes, sir.
16 Q Okay Do you know why Comcast decided to offer to
17 buy the home wiring but not the home run wiring?
18 MR. BIANCHI: Objection, Your Honor, the question
19 makes no sense.
20 THE COURT: If she understands it, she could
21 answer.
22 MR. BIANCHI: The question reads, that Comcast
23 decided to offer to buy. I think counsel means offer to
24 sell.
25 MR. BALLER: You're right.

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1 THE COURT: He can ask whatever he wants.
2 MR. BALLER: You're right. Let me strike it and
3 start again with the question so it will be clear.
4 Mr. Bianchi's right.
5 BY MR. BALLER
6 Q Do you know why Comcast offered -- you were involved

7 in the decision or you participated in the discussions
8 surrounding Comcast's decision to send this letter; is that
9 correct?

10 A Yes, sir

11 Q Do you recall the discussions about why to remove
12 home run wiring only and offer to buy home wiring?

13 A Yes, sir.

14 Q And what were those discussions?

15 A There's a -- there was discussions on the Florida
16 Statute 718, where there's a provision in there that says
17 that there should be an offering of the internal wiring as
18 opposed to the home run wiring.

19 MR. BIANCHI: Objection, I just move to strike the
20 answer. Basically, the witness is giving a legal
21 conclusions on 718 and that's for the Court to do

22 THE COURT: The objection's overruled. She was
23 testifying as to what was discussed

24 BY MR. BALLER

25 Q Right, and that's your best recollection of what the

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1 discussions were? You felt that you were required to offer
2 home run -- to offer the home wiring for purchase but not
3 the home run wiring?

4 A Yes, sir.

5 Q Okay. In these discussions, did you or Ms. Delgado
6 or Ms. Hagen discuss whether you believed it was possible to
7 provide service at this property if one removed the home run

8 wiring?

9 A. It -- it was discussed that with the age of the
10 building, of the Charter Club, that the internal wiring,
11 should it be removed, would be probably very brittle and
12 would break and that would eliminate the availability of
13 pulling new wires to put in a new system.

14 Q. That was discussed?

15 A. Yes, sir

16 MR. BIANCHI: The witness answered

17 BY MR. BALLER

18 Q. So in removing the home run wiring, the -- who said
19 that? Was it -- do you recall who said that, whose
20 statement that was?

21 A. No, I don't recall, but it would have been a
22 technician

23 Q. Are you saying that -- let's say who was involved in
24 this discussion.

25 MR. BIANCHI: Your Honor, the witness' answer just

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1 told us that it's all hearsay. It was a technician. It
2 wasn't Ms. Hagen or Ms. Delgado. Move to strike.

3 MR. BALLER: Your Honor, I think the witness
4 should tell us who was involved in the discussion and then
5 what she perceived at the time.

6 THE COURT: The objection is sustained as to
7 statements by the technician.

8 BY MR. BALLER

9 Q Okay Let's limit ourselves to Ms Hagen,
10 Ms. Delgado, and yourself, okay? Was it your understanding
11 that removing the home run wiring would make it impossible
12 for Marco Island Cable to provide service at the Charter
13 Club?

14 MR. BIANCHI: Objection, Your Honor. Mr. Baller's
15 not even asking whether Ms. Hagen and Ms. Delgado and she
16 discussed what the subject of his question is.

17 THE COURT: The objection is sustained.

18 MR. BALLER: May we have a sidebar?

19 THE COURT: You may.

20 (At sidebar, Court and counsel present)

21 MR. BALLER: Your Honor, I believe that's -- Your
22 Honor, I believe that she can testify about this because
23 this represents her then existing mental, emotional, and
24 physical reactions to the information that she was having.
25 In other words, her state of mind. These were --

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1 THE COURT: The objection's sustained. She's not
2 going to be allowed to testify to what a technician told
3 her. You can testify -- I'm sorry, you can ask questions
4 and she can testify as to the conversation she had with the
5 other two women that you've identified. But if it didn't
6 come up in that conversation, she can't testify to what a
7 technician told her, or her state of mind isn't relevant.

8 Now, if it was discussed, if Ms. Delgado, for

9 example, said the wire is brittle, so be it. I'm not sure
10 you heard the same thing I heard as to what she said with
11 regard to the brittle wire -- brittle wire, but that's a
12 different issue

13 MR. BALLER: Okay Just ask the question directly
14 or do you want to hear from --

15 THE COURT: What is it?

16 MS. LARSON: She discussed whether Ms. Delgado and
17 Ms. Hagen were present, you know, the exception to the
18 hearsay, number three, whether they understood this,
19 whatever advice the technicians gave them.

20 MR. BIANCHI: No. I mean, the question is, they
21 have to establish --

22 THE COURT: They can testify --

23 MR. BALLER: Just what they talked about.

24 THE COURT: If in the conversation Ms. Delgado
25 said, "The technician said all the wire is going to fall

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1 apart," if that was said in the conversation, she can
2 testify to that. If it's some conversation this witness had
3 with the technician, she can't.

4 MS. LARSON: She was management

5 THE COURT: I understand. The technician's not.

6 MS. LARSON: We'll work that out

7 (Sidebar concluded)

8 THE COURT: You may proceed.

9 MR. BALLER: Thank you, Your Honor

10 BY MR. BALLER

11 Q Ms. Folk, I am going to try to restrict my -- my
12 questions to you to just the discussions that you were a
13 participant in, who said what directly to you, and we're
14 limiting ourselves to Ms. Hagen, Ms. Delgado, and yourself
15 Okay?

16 A Okay.

17 Q So I am not asking you what you may have heard from
18 anyone else. I just want to get from you what the three of
19 you discussed, or any combination of you that where you were
20 involved in the discussion

21 A Okay

22 Q Did you -- did you, Ms. Hagen, and Ms. Delgado
23 discuss the impact on the Charter Club of removing the home
24 run wiring from the Charter Club, or the likely impact that
25 that would have?

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1 A Yes, sir.

2 Q And what was the discussion?

3 A The discussion was involved in what it would take to
4 take the wiring out, as far as the Comcast side would be
5 concerned, and what it would take to put wiring in.

6 Q Please elaborate. Tell us, best as you can, who said
7 what and what the substance of the discussion was. If you
8 want me to help you break that down into parts, I'd be happy
9 to ask you questions

10 MR. BIANCHI: Your Honor, I think that would be
11 required. Otherwise, the witness is being called to narrate
12 something.

13 BY MR. BALLER

14 Q Okay, let's focus first on what would be involved to
15 Comcast to remove the wiring; okay? Did you discuss the
16 amount of time that it would take to remove the wiring,
17 assuming you got access to the property?

18 A Yes, sir, that was discussed.

19 Q And do you recall what your -- what your discussion
20 about that was?

21 A Yes, sir. That was in -- that would involve the
22 technical team, where we would have to get with the
23 technicians to discuss with us the time, their estimated
24 time frame as to how long it would take, what they would
25 need to do, what would the expense be to Comcast to do that.

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1 Q Okay. Now, don't tell me what the technicians said.
2 I'm not asking you that. I'm just asking you whether you,
3 Ms. Hagen, and Ms. Delgado discussed the amount of time that
4 you expected it would take for Comcast to remove the home
5 run wiring? And if so, what your conclusions were.

6 MR. BIANCHI: Compound question, Your Honor.

7 THE COURT: Overruled. She can answer if she can.

8 A That between the three of us it was discussed. Off
9 the -- out of my memory, I cannot tell you exactly what the

10 time frame was.

11 BY MR. BALLER

12 Q. Sure, okay. Did you discuss how much it would cost

13 Comcast to remove the wiring?

14 A. Yes, sir, we did.

15 Q. Okay. Do you recall what that was?

16 A. No, sir, I do not.

17 Q. Did you discuss the disruption to the property that

18 removing the wiring would cause?

19 A. Yes, sir, we did.

20 Q. And do you recall the extent of the disruption that

21 you discussed?

22 MR. BIANCHI: Objection, Your Honor, the question

23 doesn't ask -- the question reads, do you recall the extent

24 the disruption -- that makes no sense

25 MR. BALLER: Okay, let me try again. I'm sorry.

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1 BY MR. BALLER

2 Q. Do you recall what was said about the extent of the

3 disruption that removing the wiring would cause?

4 A. No, sir.

5 Q. Okay. Did you discuss the cost that the Charter Club

6 would incur in replacing the wiring?

7 A. No, sir, that wasn't discussed.

8 Q. Did you discuss the age of the residents of the

9 Charter Club?

10 A. Not specific to the Charter Club, no, sir.

11 Q Did you discuss the impact that removing the wiring
12 would have on the MDU management and ownership community on
13 Marco Island?

14 A Yes, sir.

15 Q And what do you recall about that discussion?

16 A The impact for the Charter Club, itself, would be
17 they would have to initiate an alternative provider to
18 install cable within the facility, itself, in order for them
19 to be able to receive service And you asked about Marco
20 Island as a whole, as well, in the question?

21 Q Let me -- let me just build on what you just said, or
22 let me ask for some clarification Did you discuss whether
23 it would be easy, difficult, or impossible for a second
24 system of wiring to be installed at the Charter Club?

25 A Yes, sir, we did.

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1 Q And what was your discussion?

2 A That it would be difficult for a second system to be
3 installed if the old system was removed.

4 Q Did you discuss the reasons why it would be
5 difficult?

6 A Yes, sir, we did

7 Q And what do you recall about that discussion?

8 A The discussion was that the internal wiring that was
9 in place was old and probably brittle

10 MR. BIANCHI: Objection, Your Honor, objection.

11 We've already established -- this discussion is unclear and

12 the witness is about to testify about hearsay.

13 THE COURT: Overruled.

14 BY MR. BALLER

15 Q Go ahead, please.

16 A This is a discussion between the three of us. We

17 discussed the feedback we had gotten and that was that the

18 wiring would -- because of the age of the wiring, the

19 likelihood of it of being brittle was very good and that if

20 we, as a company, was to remove it, there was a good chance

21 that it could break within the internal piping and would

22 clog the pipes and would not allow another provider to put

23 cable services through those pipes.

24 Q Now, let me go back to the other part of my question

25 earlier. Did you discuss whether removing the wiring would

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1 send a message throughout the Marco Island MDU community?

2 A Yes, sir.

3 Q And what was that discussion?

4 A The discussion was setting precedence, that if this

5 was a case and it did -- the position -- it was a position

6 that Comcast was taking and that it would be communicated

7 within the Marco Island community.

8 Q Let's take a look at the middle paragraph. Did you

9 have an opportunity to read this language?

10 A Yes, sir.

11 Q By the way, do you know who drafted this letter? Do

12 you know who drafted this letter?

13 A. I believe it was internal counsel for Comcast.

14 Q. Do you recognize the code at the bottom of this page?

15 A. No, sir, I do not.

16 Q. Can you see that? You don't recognize that?

17 A. No, sir, I do not.

18 Q. Okay. So you're saying this language was drafted by

19 counsel for Ms. Hagen's signature?

20 A. Yes, sir.

21 Q. Okay. Now, Ms. Folk, I'm going to put up on the ELMO

22 Plaintiff's Exhibit 185, and if you'd like to follow the

23 language on the ELMO, you can do that, or you can find the

24 volume that contains Plaintiff's Exhibit 185.

25 A. 185.

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1 MR. BIANCHI: I'm sorry, counsel, Plaintiff's 185?

2 Is it Plaintiff's 185.

3 MR. BALLER: Plaintiff's 185.

4 BY MR. BALLER

5 Q. May I ask you to look at Paragraph 3, which is on the

6 second page, and in particular, look at the clause that is

7 in the middle of the paragraph following "and/or radio

8 signal" where you see the three dots on the prior exhibit.

9 Do you see the phrase "up to and including the terminal of

10 the service wire"?

11 A. Yes, sir, I do.

20 A. Yes, sir.
21 Q. And you're shown as a cc on both of these documents;
22 is that correct?
23 A. Yes, sir.
24 Q. Okay. Let's start with the letter dated
25 February 14th, which is Bates number MIC 008225, okay? And

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1 I'm going to put it up on the ELMO and I'm going to ask you
2 to read the paragraphs one at a time. First, read "at this
3 juncture", and then the paragraph that begins with "first",
4 the one I'm pointing to, and stop at that point, because I'd
5 like to ask you a few questions about it, please.
6 A. At this juncture, we are fundamentally down to two
7 issues. First, according to Chrisann, Comcast owns the
8 cable wiring inside of each unit. This discussion was
9 prompted by the language in Comcast's standard maintenance
10 notification form that states, in part, all pre-existing
11 internal wiring is the property of the unit owner. Chrisann
12 stated that the present cable agreement between Comcast and
13 Crescent Beach establishes that Comcast owns the internal
14 wiring as well. When I asked that she direct me to the
15 language in the present agreement that establishes such
16 ownership, she referred me to the first sentence in
17 Section 1 of the agreement that states that Continental, now
18 Comcast, will construct, operate, and maintain the system,
19 et cetera.

20 Considering that the system was already in place
21 at the time the present agreement was entered into, I
22 question how the language she referred me to serves to
23 establish ownership of the internal unit wiring, as Chrisann
24 contends. She went on to state that the FCC had issued some
25 directive or ruling that establishes Comcast's ownership of

1205

1 the internal wiring. I asked that she provide me with a
2 copy of the FCC directive, slash, ruling she referred me to
3 and -- referred to and you agreed that you would. From my
4 perspective, I believe the system was installed at or around
5 the time the building was first constructed. That being the
6 case, it would seem that the September 1993 FCC revision
7 cited in your standard maintenance notification would
8 control as set forth above.

9 Q. Ms. Folk, was it a common practice of Comcast to
10 include in its renewal agreements after 2001 a statement
11 that Comcast -- its renewal proposals, I should say -- a
12 statement to the effect that Comcast will install the
13 wiring, including home wiring and home run wiring?
14 A. Yes, sir.
15 Q. And was Mr. Klug's reaction in this letter that that
16 does not seem to fit because the wiring was already in the
17 building well before the renewal, a response that you
18 received from other condominiums with which you negotiated
19 renewal agreements?
20 A. Yes, sir.

21 Q And did some condominium associations just accept
22 that language without questioning it, the way that Mr Klug
23 did?
24 MR. BIANCHI: Objection, Your Honor, calls for
25 speculation.

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1 MR. BALLER: She was involved in this. It's her
2 own -- I'm asking her based on her own experience in
3 negotiating these things.
4 THE COURT: The objection's overruled. She may
5 answer if she knows.
6 BY MR. BALLER
7 Q. You want me to ask the question again?
8 A. Repeat the question. Yes, please.
9 Q. Okay. Were there associations with which you
10 personally negotiated agreements that didn't question this
11 language or language that was like the language that
12 Mr. Klug questioned here, that just accepted it?
13 A. Yes, sir, there were.
14 Q. Okay. Now, let's move to the second paragraph, or
15 the paragraph beginning with the term "second". Would you
16 please read that?
17 A. Second, there is the question of how much time
18 Comcast will be allowed to pull its system after the
19 proposed cable agreement expires. As I explained from
20 Crescent Beach's perspective, the problem as communicated to